

# NOTICE OF FINAL RULEMAKING

## TITLE 2. ADMINISTRATION

### CHAPTER 7. DEPARTMENT OF ADMINISTRATION

#### FINANCE DIVISION, PURCHASING OFFICE

#### PREAMBLE

<b><u>1.</u></b>	<b><u>Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
	R2-7-101	Repeal
	R2-7-101	New Section
	R2-7-102	Repeal
	R2-7-102	New Section
	R2-7-103	Repeal
	R2-7-103	New Section
	R2-7-104	Repeal
	R2-7-105	Repeal
	R2-7-201	Repeal
	R2-7-201	New Section
	R2-7-202	Repeal
	R2-7-202	New Section
	R2-7-203	Repeal
	R2-7-203	New Section
	R2-7-204	New Section
	R2-7-205	New Section
	R2-7-206	New Section
	R2-7-207	New Section
	R2-7-208	New Section
	R2-7-209	New Section
	R2-7-301	Repeal
	R2-7-302	Repeal
	R2-7-303	Repeal
	R2-7-304	Repeal
	R2-7-305	Repeal
	R2-7-306	Repeal
	R2-7-307	Repeal
	R2-7-308	Repeal
	R2-7-309	Repeal

R2-7-310	Repeal
R2-7-311	Repeal
R2-7-312	Repeal
R2-7-313	Repeal
R2-7-314	Repeal
R2-7-315	Repeal
R2-7-316	Repeal
R2-7-317	Repeal
R2-7-318	Repeal
R2-7-319	Repeal
R2-7-320	Repeal
R2-7-321	Repeal
R2-7-322	Repeal
R2-7-323	Repeal
R2-7-324	Repeal
R2-7-325	Repeal
R2-7-326	Repeal
R2-7-327	Repeal
R2-7-328	Repeal
R2-7-329	Repeal
R2-7-330	Repeal
R2-7-331	Repeal
R2-7-332	Repeal
R2-7-333	Repeal
R2-7-334	Repeal
R2-7-335	Repeal
R2-7-336	Repeal
R2-7-337	Repeal
R2-7-338	Repeal
R2-7-339	Repeal
R2-7-340	Repeal
R2-7-341	Repeal
R2-7-342	Repeal
R2-7-343	Repeal
R2-7-344	Repeal
R2-7-345	Repeal
R2-7-346	Repeal

R2-7-347	Repeal
R2-7-348	Repeal
R2-7-349	Repeal
R2-7-350	Repeal
R2-7-351	Repeal
R2-7-352	Repeal
R2-7-353	Repeal
R2-7-354	Repeal
R2-7-355	Repeal
R2-7-356	Repeal
R2-7-357	Repeal
R2-7-358	Repeal
R2-7-359	Repeal
R2-7-360	Repeal
R2-7-361	Repeal
R2-7-362	Repeal
R2-7-363	Repeal
R2-7-364	Repeal
R2-7-365	Repeal
R2-7-366	Repeal
R2-7-367	Repeal
R2-7-368	Repeal
R2-7-369	Repeal
R2-7-370	Repeal
Part A	New Part
R2-7-A301	New Section
Part B	New Part
R2-7-B301	New Section
R2-7-B302	New Section
R2-7-B303	New Section
R2-7-B304	New Section
R2-7-B305	New Section
R2-7-B306	New Section
R2-7-B307	New Section
R2-7-B308	New Section
R2-7-B309	New Section
R2-7-B310	New Section

R2-7-B311	New Section
R2-7-B312	New Section
R2-7-B313	New Section
R2-7-B314	New Section
R2-7-B315	New Section
R2-7-B316	New Section
Part C	New Part
R2-7-C301	New Section
R2-7-C302	New Section
R2-7-C303	New Section
R2-7-C304	New Section
R2-7-C305	New Section
R2-7-C306	New Section
R2-7-C307	New Section
R2-7-C308	New Section
R2-7-C309	New Section
R2-7-C310	New Section
R2-7-C311	New Section
R2-7-C312	New Section
R2-7-C313	New Section
R2-7-C314	New Section
R2-7-C315	New Section
R2-7-C316	New Section
R2-7-C317	New Section
R2-7-C318	New Section
Part D	New Part
R2-7-D301	New Section
R2-7-D302	New Section
R2-7-D303	New Section
R2-7-D304	New Section
R2-7-D305	New Section
Part E	New Part
R2-7-E301	New Section
R2-7-E302	New Section
R2-7-E303	New Section
Part F	New Part
R2-7-F301	New Section

R2-7-F302	New Section
R2-7-F303	New Section
R2-7-F304	New Section
R2-7-F305	New Section
R2-7-F306	New Section
R2-7-F307	New Section
R2-7-F308	New Section
R2-7-F309	New Section
R2-7-F310	New Section
Part G	New Part
R2-7-G301	New Section
R2-7-G302	New Section
R2-7-G303	New Section
R2-7-G304	New Section
R2-7-G305	New Section
R2-7-401	Repeal
R2-7-401	New Section
R2-7-402	Amend
R2-7-403	Amend
R2-7-404	Repeal
R2-7-405	Repeal
R2-7-406	Repeal
R2-7-407	Repeal
R2-7-408	Repeal
R2-7-409	Repeal
R2-7-410	Repeal
R2-7-411	Repeal
R2-7-501	Repeal
R2-7-501	New Section
R2-7-502	Amend
R2-7-503	Repeal
R2-7-503	New Section
R2-7-504	Repeal
R2-7-504	New Section
R2-7-505	Repeal
R2-7-505	New Section
R2-7-506	Amend

R2-7-507	Repeal
R2-7-507	New Section
R2-7-508	New Section
R2-7-509	Repeal
R2-7-509	New Section
R2-7-510	Repeal
R2-7-510	New Section
R2-7-511	Repeal
R2-7-511	New Section
R2-7-512	Repeal
R2-7-513	Repeal
R2-7-514	Repeal
R2-7-515	Repeal
R2-7-601	Repeal
R2-7-601	New Section
R2-7-602	New Section
R2-7-603	New Section
R2-7-604	New Section
R2-7-605	New Section
R2-7-606	New Section
R2-7-701	Amend
R2-7-702	New Section
R2-7-703	New Section
R2-7-704	New Section
R2-7-705	New Section
R2-7-901	Repeal
R2-7-902	Repeal
R2-7-903	Repeal
R2-7-904	Repeal
R2-7-905	Repeal
R2-7-906	Repeal
R2-7-907	Repeal
R2-7-908	Repeal
R2-7-909	Repeal
R2-7-910	Repeal
R2-7-911	Repeal
R2-7-912	Repeal

R2-7-913	Repeal
R2-7-914	Repeal
R2-7-915	Repeal
R2-7-916	Repeal
R2-7-917	Repeal
R2-7-918	Repeal
R2-7-919	Repeal
R2-7-920	Repeal
R2-7-921	Repeal
R2-7-922	Repeal
R2-7-923	Repeal
R2-7-924	Repeal
R2-7-925	Repeal
R2-7-926	Repeal
R2-7-927	Repeal
R2-7-928	Repeal
R2-7-929	Repeal
R2-7-930	Repeal
R2-7-931	Repeal
R2-7-932	Repeal
R2-7-933	Repeal
R2-7-934	Repeal
R2-7-935	Repeal
R2-7-936	Repeal
R2-7-937	Repeal
Part A	New Part
R2-7-A901	New Section
R2-7-A902	New Section
R2-7-A903	New Section
R2-7-A904	New Section
R2-7-A905	New Section
R2-7-A906	New Section
R2-7-A907	New Section
R2-7-A908	New Section
R2-7-A909	New Section
R2-7-A910	New Section
R2-7-A911	New Section

Part B	New Part
R2-7-B901	New Section
R2-7-B902	New Section
R2-7-B903	New Section
R2-7-B904	New Section
R2-7-B905	New Section
Part C	New Part
R2-7-C901	New Section
R2-7-C902	New Section
R2-7-C903	New Section
R2-7-C904	New Section
R2-7-C905	New Section
R2-7-C906	New Section
R2-7-C907	New Section
R2-7-C908	New Section
R2-7-C909	New Section
R2-7-C910	New Section
R2-7-C911	New Section
Part D	New Part
R2-7-D901	New Section
R2-7-D902	New Section
R2-7-1001	Repeal
R2-7-1001	New Section
R2-7-1002	Repeal
R2-7-1002	New Section
R2-7-1003	Repeal
R2-7-1003	New Section
R2-7-1004	Repeal
R2-7-1004	New Section
R2-7-1005	Repeal
R2-7-1005	New Section
R2-7-1006	Repeal
R2-7-1006	New Section
R2-7-1007	Repeal
R2-7-1007	New Section
R2-7-1008	Repeal
R2-7-1008	New Section



R2-7-1009	Repeal
R2-7-1009	New Section
R2-7-1010	Repeal
Article 13	New Article
R2-7-1301	New Section

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the implementing statutes (specific):**

Authorizing statutes: A.R.S. § 41-2511(A)

Implementing statutes: A.R.S. §§ 41-2511, 41-2501 through 41-2504, 41-2512 through 41-2516, 41-2531 through 41-2559, 41-2561 through 41-2568, 41-2571 through 41-2579, 41-2580, 41-2585 through 41-2586, 41-2591, 41-2601 through 41-2607, 41-2611 through 41-2617, 41-2631 through 41-2637, 41-2661 and 41-2662, and 41-2671 through 41-2673.

**3. The effective date of the rules:**

Sixty days after filing with the Secretary of State.

**4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 11 A.A.R. 2742, July 22, 2005

Notice of Rulemaking Docket Opening: 11 A.A.R. 4141, October 21, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 4006, October 21, 2005

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: John Adler, State Procurement Administrator

Address: Arizona Department of Administration – Enterprise Procurement Services  
100 N. 15<sup>th</sup> Ave., 1<sup>st</sup> Floor, Suite 104 Phoenix, AZ 85007

Telephone: (602) 542-5308

Fax: (602) 542-5508

**6. An explanation of the rules, including the agency’s reasons for initiating the rulemaking:**

The subject matter of these rules is the procurement and management of all materials, services, and construction for the State of Arizona. The statutes and the rules are based on the American Bar Association Model Procurement Code and are commonly referred to as the “Arizona Procurement Code.” The purpose of this rulemaking is to address the issues identified in the previous five-year review report approved by the Governor’s Regulatory Review Council and to improve the procurement process. Additionally, the rulemaking will update the rules and bring them into conformance with current rule writing standards, statutes, and current practice.

**7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all underlying each study, and any**

**analysis of each study and other supporting material:**

The agency did not utilize a study for evaluating or justifying the rulemaking.

**8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

*Identification of the Proposed Rule Package:*

The proposed rulemaking governs the procurement and management of all materials, services, and construction for the State of Arizona. The rules are based on the American Bar Association's Model Procurement Code and known as the "Arizona Procurement Code."

*Identification of the Impacted Parties:*

The parties affected by this rulemaking include: state government officials and managers, state government procurement employees, suppliers including small businesses, minority and women owned businesses, non-profit organizations that provide services to state government, associations that represent various business groups, attorneys, local government units including cities, counties, and school districts.

*Benefits / Costs of these rule changes:*

The benefits of this rulemaking are greater efficiency in public procurement, reduced operating cost of public procurement, increased opportunities for small, minority and women-owned businesses, improved understanding and ease of use of rules for government agencies and suppliers and more open access to procurement opportunities and information.

*Probable Impact on Small Business:*

The impact on small businesses should be positive. Small businesses will benefit from more open access to contracting opportunities with the State. In addition, the proposed changes in this rulemaking should provide a better understanding of the rules and their function to small business than do the rules currently in place.

*Probable Effects on State Revenue:*

There should be no immediate measurable impact on state revenues or expenses. The long term effect should be a reduction in costs resulting from greater efficiency in the procurement program and the ability to negotiate lower costs for the State.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Based on suggestions from Council staff, minor, non-substantive changes were made in the rules to improve clarity. The suggestions included grammatical and other changes necessary to clarify the rules.

**11. A summary of the comments made regarding the rules and the agency response to them:**

The close of record for the proposed rules was December 2, 2005 at 5:00 p.m. The Department did receive a written comment from Mr. James D. Robertson on November 30, 2005 regarding his concerns for the lack of any reference to the Governor's Executive Order 2005-30 ("Ensuring Compliance With Federal

Immigration Laws By State Employers and Contractors”) dated October 20, 2005. The Department responded to Mr. Robertson’s concerns in writing stating that the Department is drafting a Procurement Policy for Executive Order 2005-30 and has provided interim compliance guidance to state agencies. In addition, the procedures required by #3 in the Governor's Executive Order are not contained in these rules, but instead will be contained in each contract drafted according to the Procurement Policy.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**13. Any material incorporated by reference and its location in the text:**

Code of Federal Regulations, 48 CFR 31 (September 2001). Located in Article 7. Cost Principles in Section R2-7-701.

**14. Were these rules previously made as emergency rules?**

No

**15. The full text of the rules follows:**

## ARTICLE 1. GENERAL PROVISIONS

### Section

- R2-7-101. ~~Written Determinations~~ Definitions
- R2-7-102. ~~Definitions~~ Written Determinations
- R2-7-103. ~~Time and Place of Market Price~~ Confidential Information
- R2-7-104. ~~Confidential Information~~ Repealed
- R2-7-105. ~~State Employee or Official Use of Contracts Prohibited~~ Repealed

## ARTICLE 2. PROCUREMENT ORGANIZATION

### Section

- R2-7-201. ~~Delegation of Procurement Authority~~ State Procurement Administrator: Duties and Qualifications
- R2-7-202. ~~Delegation of Authority for Procurements Not Exceeding an Aggregate Amount of \$5,000~~ Delegation of Procurement Authority to State Governmental Units
- R2-7-203. ~~Procurement Advisory Groups~~ Agency Chief Procurement Officer
- R2-7-204. State Employee or Public Officer Use of State Contracts
- R2-7-205. Procurement Requests by Purchasing Agencies
- R2-7-206. Authorized Procurement Officers
- R2-7-207. Resolution of Intra-agency Procurement Disputes
- R2-7-208. Authorization of Electronic Transactions
- R2-7-209. Prospective Suppliers List

## ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION

### Section

- R2-7-301. ~~Definitions~~ Repealed
- R2-7-302. ~~General Provisions~~ Repealed
- R2-7-303. ~~Extension of Offer Acceptance Time~~ Repealed
- R2-7-304. ~~Purchase Requests~~ Repealed
- R2-7-305. ~~Assignment of Rights and Duties~~ Repealed
- R2-7-306. ~~Change of Name~~ Repealed
- R2-7-307. ~~Installment Purchases~~ Repealed
- R2-7-308. ~~Multiple source Contracting~~ Repealed
- R2-7-309. ~~Purchase of Items Separately from Construction Contract~~ Repealed
- R2-7-310. ~~Contract Change Orders and Amendments~~ Repealed
- R2-7-311. ~~Arizona State Contracts~~ Repealed
- R2-7-312. ~~Prospective Vendors Lists~~ Repealed
- R2-7-313. ~~Invitation for Bids~~ Repealed
- R2-7-314. ~~Pre-bid Conferences~~ Repealed

R2-7-315. ~~Amendments to Invitations for Bids~~ Repealed

R2-7-316. ~~Pre-opening Modification or Withdrawal of Bids~~ Repealed

R2-7-317. ~~Late Bids, Late Withdrawals, and Late Modifications~~ Repealed

R2-7-318. ~~Receipt, Opening, and Recording of Bids~~ Repealed

R2-7-319. ~~Mistakes in Bids~~ Repealed

R2-7-320. ~~Bid Evaluation and Award~~ Repealed

R2-7-321. ~~Only One Bid Received~~ Repealed

R2-7-322. ~~Multi-step Sealed Bidding~~ Repealed

R2-7-323. ~~Phase One of Multi-step Sealed Bidding~~ Repealed

R2-7-324. ~~Phase Two of Multi-step Sealed Bidding~~ Repealed

R2-7-325. ~~Competitive Sealed Proposals~~ Repealed

R2-7-326. ~~Request for Proposals~~ Repealed

R2-7-327. ~~Pre-proposal Conferences~~ Repealed

R2-7-328. ~~Late Proposals, Late Modifications or Late Withdrawals~~ Repealed

R2-7-329. ~~Receipt of Proposals~~ Repealed

R2-7-330. ~~Evaluation of Proposals~~ Repealed

R2-7-331. ~~Discussions with Individual Offerors~~ Repealed

R2-7-332. ~~Best and Final Offers~~ Repealed

R2-7-333. ~~Mistakes in Proposals~~ Repealed

R2-7-334. ~~Contract Award~~ Repealed

R2-7-335. ~~Small Business Set aside~~ Repealed

R2-7-336. ~~Procurements Not Exceeding an Aggregate Amount of \$25,000~~ Repealed

R2-7-337. ~~Other Procurements Not Exceeding an Aggregate Amount of \$10,000~~ Repealed

R2-7-338. ~~Sole Source Procurement~~ Repealed

R2-7-339. ~~Emergency Procurements~~ Repealed

R2-7-340. ~~Emergency Procurement Procedure~~ Repealed

R2-7-341. ~~Competitive Selection Procedures for Services of Clergy, Physicians, Dentists, Legal Counsel, or Certified Public Accountants~~ Repealed

R2-7-342. ~~Statement of Qualifications~~ Repealed

R2-7-343. ~~Request for Proposals~~ Repealed

R2-7-344. ~~Receipt of Proposals~~ Repealed

R2-7-345. ~~Evaluation of Proposals~~ Repealed

R2-7-346. ~~Discussions with Individual Offerors~~ Repealed

R2-7-347. ~~Evaluation and Contract Award Where Price is an Evaluation Factor~~ Repealed

R2-7-348. ~~Selection and Contract Award Where Price is not an Evaluation Factor~~ Repealed

R2-7-349. ~~Annual Report~~ Repealed

R2-7-350. ~~Cancellation of Solicitations; Rejection of Bids or Proposals~~ Repealed

~~R2-7-351. Cancellation of Solicitation Before the Date and Time for Receipt of Bids and Proposals~~  
Repealed

~~R2-7-352. Cancellation of Solicitation After Receipt of Bids or Proposals~~ Repealed

~~R2-7-353. Rejection of Individual Bids or Proposals~~ Repealed

~~R2-7-354. Responsibility of Bidders and Offerors~~ Repealed

~~R2-7-355. Prequalification~~ Repealed

~~R2-7-356. Bid and Performance Bonds for Material or Service Contracts~~ Repealed

~~R2-7-357. Submission of Cost or Pricing Data~~ Repealed

~~R2-7-358. Certification of Current Cost or Pricing Data~~ Repealed

~~R2-7-359. Refusal to Submit Cost or Pricing Data~~ Repealed

~~R2-7-360. Defective Cost or Pricing Data~~ Repealed

~~R2-7-361. Price or Cost Analysis~~ Repealed

~~R2-7-362. Authority to Use Contract Types~~ Repealed

~~R2-7-363. Fixed-price Contracts~~ Repealed

~~R2-7-364. Lease and Lease-purchase Contracts~~ Repealed

~~R2-7-365. Cost reimbursement and Cost Incentive Contracts~~ Repealed

~~R2-7-366. Time and Materials Contracts and Labor Hour Contracts~~ Repealed

~~R2-7-367. Option Provisions~~ Repealed

~~R2-7-368. Approval of Accounting System~~ Repealed

~~R2-7-369. Anticompetitive practices among bidders or offerors~~ Repealed

~~R2-7-370. Record of Procurement Actions~~ Repealed

#### **PART A. GENERAL PROVISIONS**

~~R2-7-A301. Source Selection Method: Determination Factors~~

#### **PART B. COMPETITIVE SEALED BIDDING**

~~R2-7-B301. Solicitation~~

~~R2-7-B302. Pre-offer Conferences~~

~~R2-7-B303. Solicitation Amendment~~

~~R2-7-B304. Modification or Withdrawal of Offer Before Offer Due Date and Time~~

~~R2-7-B305. Cancellation of a Solicitation Before Offer Due Date and Time~~

~~R2-7-B306. Receipt, Opening, and Recording of Offers~~

~~R2-7-B307. Late Offers, Modifications, Withdrawals~~

~~R2-7-B308. Cancellation of Solicitation After Receipt of Offers and Before Award~~

~~R2-7-B309. One Offer Received~~

~~R2-7-B310. Offer Mistakes Discovered After Offer Opening and Before Award~~

~~R2-7-B311. Extension of Offer Acceptance Period~~

~~R2-7-B312. Bid Evaluation~~

~~R2-7-B313. Responsibility Determinations~~

R2-7-B314. Contract Award

R2-7-B315. Mistakes Discovered After Award

R2-7-B316. Multistep Sealed Bidding

**PART C. COMPETITIVE SEALED PROPOSALS**

R2-7-C301. Solicitation

R2-7-C302. Pre-offer Conferences

R2-7-C303. Solicitation Amendment

R2-7-C304. Modification or Withdrawal of Offer Before Offer Due Date and Time

R2-7-C305. Cancellation of Solicitation Before Offer Due Date and Time

R2-7-C306. Receipt, Opening, and Recording of Offers

R2-7-C307. Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time

R2-7-C308. Cancellation of Solicitation After Offer Opening and Before Award

R2-7-C309. Only One Offer Received

R2-7-C310. Extension of Offer Acceptance Period

R2-7-C311. Determination of Not Susceptible for Award

R2-7-C312. Responsibility Determinations

R2-7-C313. Clarification of Offers

R2-7-C314. Negotiations with Responsible Offerors and Revisions of Offers

R2-7-C315. Final Proposal Revisions

R2-7-C316. Evaluation of Offers

R2-7-C317. Contract Award

R2-7-C318. Mistakes Discovered After Award

**PART D. PROCUREMENTS NOT EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. §41-**

**2535**

R2-7-D301. Applicability

R2-7-D302. Solicitation – Request for Quotation

R2-7-D303. Request for Quotation Issuance

R2-7-D304. Contract Award

R2-7-D305. Purchases of \$5000 and Less

**PART E. LIMITED COMPETITION FOR PROCUREMENTS EXCEEDING THE AMOUNT**

**PRESCRIBED IN A.R.S. §41-2535**

R2-7-E301. Sole Source Procurements

R2-7-E302. Emergency Procurements

R2-7-E303. Competition Impracticable Procurements

**PART F. COMPETITIVE SELECTION PROCESS FOR SERVICES OF CLERGY, PHYSICIANS,**

**DENTISTS, LEGAL COUNSEL, OR CERTIFIED PUBLIC ACCOUNTANTS**

R2-7-F301. Statement of Qualifications

R2-7-F302. Solicitation

R2-7-F303. Solicitation Amendment

R2-7-F304. Cancellation of Solicitation

R2-7-F305. Receipt, Opening, and Recording of Offers

R2-7-F306. Timely and Late Modifications or Withdrawals of Offer

R2-7-F307. Late Offers

R2-7-F308. Negotiations with Offerors

R2-7-F309. Contract Award

R2-7-F310. Mistakes Discovered After Award

#### **PART G. OTHER SOURCE SELECTION**

R2-7-G301. Request for Information

R2-7-G302. Demonstration Projects

R2-7-G303. Unsolicited Proposals

R2-7-G304. General Services Administration Contracts

R2-7-G305. Public-Private Partnership Contracts

#### **ARTICLE 4. SPECIFICATIONS**

Section

R2-7-401. ~~Definitions~~ Preparation of Specifications

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R2-7-405. ~~Confidentiality~~ Repealed

R2-7-406. ~~Reserved~~ Repealed

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#### **Section**

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R2-7-1009. ~~Procurement of Other AIB or ACI Materials or Services by State Governmental Units~~ Set-aside Application Dispute Process

R2-7-1010. ~~Renumbered~~ Repealed

### **ARTICLE 13. ON-LINE BIDDING**

Section

R2-7-1301. On-Line Solicitation Process

## ARTICLE 1. GENERAL PROVISIONS

### **R2-7-101. ~~Written Determinations~~ Definitions**

- ~~A. Each written determination shall specify the facts and law necessary to support the determination.~~
- ~~B. The State Procurement Administrator is authorized to prescribe methods and operational procedures to be used in preparing written determinations.~~
- ~~C. Each written determination shall be filed in the applicable solicitation or contract file.~~

In this Chapter, unless the context otherwise requires:

1. “Affiliate” means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidary relationship, or persons that are similarly affiliated.
2. “Agency chief procurement officer ” means the person within a purchasing agency, as identified by the state governmental agency head, who is acting under specific, written authority from the state procurement administrator in accordance with R2-7-202 or any person delegated that authority, in writing, under R2-7-203. The term does not include any other procurement officer or person within a state governmental unit who does not have this written delegation of authority.
3. “Aggregate dollar amount” means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
4. “Alternate project delivery methods” means design-build, construction-management-at-risk, and job-order-contracting construction services.
5. “Arizona Procurement Code” means A.R.S. Title 41, Chapter 23 and A.A.C. Title 2, Chapter 7.
6. “Arizona state contract” means a contract established or authorized by the state procurement administrator for use by state governmental units and eligible procurement units.
7. “Award” means a determination by the state that it is entering into a contract with one or more offerors.
8. “Bid” means an offer in response to solicitation.
9. “Bidder” means “offeror” as defined in R2-7-101(36).
10. “Brand name or equal specification” means a written description that uses one or more manufacturers’ product name or catalog item, to describe the standard of quality, performance, and other characteristics that meet state requirements and provides for submission of equivalent products or services.
11. “Brand name specification” means a written description limited to a list of one or more items by manufacturers’ product name or catalog item to describe the standard of quality, performance, and other characteristics that meet state requirements.
12. “Clergy” means a minister of a religion.

13. “Competitive range” means the range determined on the basis of the criteria stated in the solicitation and shall include all offers that have a reasonable chance of being selected for award.
14. “Component” means a part of a manufactured product.
15. “Contract amendment” means a written modification of a contract under A.R.S. §41-2503(8) or a unilateral exercise of a right contained in the contract.
16. “Cost data” means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or will be incurred by the offeror or contractor in performing the contract.
17. “Cost-plus-a-percentage-of-cost contract” means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
18. “Day” means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
19. “Debarment” means an action taken by the director under R2-7-C901 that prohibits a person from participating in the state procurement process.
20. “Defective data” means data that is inaccurate, incomplete or outdated.
21. “Dentist” means a person licensed under A.R.S. Title 32, Chapter 11.
22. “Descriptive literature” means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item or service offered.
23. “Discussion” means “negotiation” as defined in R2-7-101(34).
24. “Eligible procurement unit” means a local public procurement unit, any other state or agency of the United States, or a nonprofit educational or public health institution, including any certified non-profit agency for disabled individuals as defined in A.R.S. § 41-2631, that is eligible under a cooperative agreement to use Arizona state contracts.
25. “Enterprise Procurement Services” means state procurement office as defined in R2-7-101(50).
26. “Filed” means delivery to an agency chief procurement officer or to the director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
27. “Finished goods” means units of a manufactured product awaiting sale.
28. “Force account” as used in A.R.S. § 41-2572, means work performed by the state’s regularly employed personnel.
29. “Governing instruments” means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.
30. “In writing” has the same meaning as “written” or “writing” in A.R.S. §47-1201, which includes printing, typewriting, electronic transmission, facsimili, or any other intentional reduction to tangible form.

31. “Interested party” means an offeror or prospective offeror whose economic interest is affected substantially and directly by issuance of a solicitation, an award or loss of an award. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
32. “Legal counsel” means a person licensed as an attorney by the Arizona Supreme Court.
33. “May” means something is permissive.
34. “Negotiation” means an exchange or series of exchanges between the state and an offeror or contractor that allows the state or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by these rules or statutes.
35. “Offer” means a response to a solicitation.
36. “Offeror” means a person that responds to a solicitation.
37. “Physician” means a person licensed under A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
38. “Price data” means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, “prices” refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
39. “Procurement file” means the official records file of the director whether located in the office of the director or at a public procurement unit.
40. “Procurement request” means the document that initiates a procurement.
41. “Proposal” means an offer submitted in response to a solicitation.
42. “Prospective offeror” means a person that expresses an interest in a specific solicitation.
43. “Raw materials” means goods, excluding equipment and machinery, purchased for use in manufacturing a product.
44. “Reverse auction” means a procurement method in which offerors are invited to bid on specified goods or services through on-line bidding and real-time electronic bidding. During an electronic bidding process, offerors’ prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
45. “Shall” means something is mandatory.
46. “Small business” means a for-profit or not-for-profit organization, including its affiliates, with fewer than one hundred full-time employees or gross annual receipts of less than four million dollars for the last complete fiscal year.
47. “Solicitation” means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.
48. “Source selection method” means a process that is approved by an agency chief procurement officer and used to select a person to enter into a contract for procurement.

49. "State procurement administrator" means the individual appointed by the director as a chief procurement officer for a state, or a state procurement administrator's authorized designee. A different title may be used for this position.
50. "State procurement office" means an office that acts under the authority delegated to the state procurement administrator.
51. "Suspension" means an action taken by the director under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.
52. "Trade secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

## **R2-7-102. Definitions Written Determinations**

In this Chapter, unless the context otherwise requires:

1. ~~"Arizona state contract" means a contract established by the Department through which state governmental units are required to purchase and other eligible procurement units may purchase.~~
2. ~~"Assistant Director for Facilities Planning and Construction" means the Assistant Director of the Department of Administration for Facilities Management.~~
3. ~~"Clergy" means a minister of a religion.~~
4. ~~"Days" mean calendar days and shall be computed pursuant to A.R.S. § 1-243.~~
5. ~~"Dentist" means a person licensed pursuant to A.R.S. Title 32, Chapter 11.~~
6. ~~"Finished goods" mean units of manufactured product awaiting sale.~~
7. ~~"Legal counsel" means a person licensed as an attorney pursuant to rules of the Supreme Court, A.R.S. Volume 17A.~~
8. ~~"May" denotes the permissive.~~
9. ~~"Physician" means a person licensed pursuant to Title 32, Chapter 13 or 17.~~
10. ~~"Purchase request" or "purchase requisition" means that document, or electronic transmission, whereby a using agency requests that a contract be entered into for a specific need and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by the Arizona Procurement Code or this Chapter.~~
11. ~~"Raw materials" mean goods, excluding equipment and machinery, purchased for use in manufacturing a product.~~
12. ~~"Shall" denotes the imperative.~~
13. ~~"State Procurement Administrator" means the person holding the position as the administrator of the State Procurement Office.~~



14. "Trade secret" means a secret, commercially valuable plan, formula, process or device that is used for making, preparing, compounding or processing trade commodities and that can be said to be a product of either innovation or substantial effort.

- A. If a written determination is required under applicable law, an agency chief procurement officer shall include the basis for the action taken in the written determination.
- B. The agency chief procurement officer shall place the written determination into the purchasing agency's procurement file.
- C. A procurement file located at a state agency is considered the official records file of the director as required by A.R.S. § 41-2502, if the file is maintained by an agency chief procurement officer.

#### **R2-7-103. Time and Place of Market Price Confidential Information**

~~If a price at the times or places described in this Chapter is not readily available, the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.~~

- A. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate any trade secret and other proprietary information, using the term "confidential". Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
- B. Until a final determination is made under subsection (C), an agency chief procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by an agency chief procurement officer to have a legitimate state interest.
- C. Upon receipt of a submission, an agency chief procurement officer shall make one of the following written determinations:
  - 1. The designated information is confidential and the agency chief procurement officer shall not disclose the information except to those individuals deemed by the agency chief procurement officer to have a legitimate state interest.
  - 2. The designated information is not confidential; or
  - 3. Additional information is required before a final confidentiality determination can be made.
- D. If an agency chief procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the state procurement administrator.
- E. An agency chief procurement officer may release information designated as confidential under subsection (A) if:
  - 1. A request for review is not received by the state procurement administrator within the time period specified in the notice; or

2. The state procurement administrator, after review, makes a written determination that the designated information is not confidential.

**R2-7-104. Confidential Information Repealed**

- A. ~~If a person believes that the person's bid, proposal, offer, specification, or protest submitted to the state contains trade secrets or other proprietary data that remain confidential under A.R.S. § 41-2533(D) or 41-2534(D), the person shall include with the submission a statement that explains and supports the person's claim that the submission contains such information. The person also shall stamp as confidential or otherwise specifically identify in the submission all trade secrets and other proprietary data that the person believes remain confidential.~~
- B. ~~The information identified by the person as confidential shall not be disclosed until the Director makes a written determination.~~
- C. ~~The procurement officer shall make an initial determination whether the information identified is confidential under A.R.S. § 41-2533(D) or 41-2534(D). If the procurement officer determines that the information is not confidential under A.R.S. § 41-2533(D) or 41-2534(D), the procurement officer shall refer the matter to the Director. The Director shall review the statement and information and shall determine in writing within a reasonable time whether the information is a trade secret or other proprietary data that shall remain confidential. If the Director determines that the information is a trade secret or other proprietary data that shall remain confidential, the information shall remain confidential.~~
- D. ~~If the Director determines to disclose the information, the Director shall inform the person in writing of such determination.~~

**R2-7-105. State Employee or Official Use of Contracts Prohibited Repealed**

~~State employees and officials shall not be permitted to make purchases for personal or business use of any contract entered into by the state.~~

**ARTICLE 2. PROCUREMENT ORGANIZATION**

**R2-7-201. Delegation of Procurement Authority State Procurement Administrator: Duties and Qualifications**

- A. ~~The Director shall consider the following factors in making the decision to delegate procurement authority.~~
- ~~1. The procurement expertise, specialized knowledge and past experience and performance of the state governmental unit;~~
  - ~~2. The impact of the delegation on procurement efficiency and effectiveness; and~~
  - ~~3. The abilities and resources of the Department to exercise the authority if it is not delegated.~~
- B. ~~Delegation shall be in writing and shall specify:~~

1. ~~The activity or function authorized;~~
  2. ~~Any limits or restrictions on the exercise of the delegated authority;~~
  3. ~~Whether the authority may be further delegated; and~~
  4. ~~The duration of the delegation.~~
- ~~C. Authority delegated by the Director may be revoked or modified by the Director.~~
- ~~D. Any state governmental unit receiving a delegation of authority shall exercise that authority according to the Arizona Procurement Code, these rules and the terms of the delegation.~~
- A. The director shall hire a state procurement administrator with executive and organizational skills and relevant, recent experience in public procurement.
- B. The state procurement administrator shall:
1. Administer the procurement of materials, services, and construction needed by the state;
  2. Establish procurement policy and procedure;
  3. Establish procurement training standards;
  4. Designate if an Arizona state contract is mandatory;
  5. Delegate procurement authority under R2-7-202; and
  6. Monitor compliance of state governmental units with state procurement laws.
- C. The state procurement administrator shall maintain a record of each contract awarded under A.R.S. §§ 41-2536 (sole source procurement) and 41-2537 (emergency procurement) that exceeds the amount prescribed in A.R.S. § 41-2535(A). The record shall be maintained for a minimum of five years. The state procurement administrator shall ensure that the record is available for public inspection and contains all of the following:
1. Each contractor's name;
  2. The estimated amount of each contract; and
  3. A description of the item or service procured.

**R2-7-202. Delegation of Authority for Procurements Not Exceeding an Aggregate Amount of \$5,000**  
**Delegation of Procurement Authority to State Governmental Units**

~~The State Procurement Administrator may delegate to any using agency the authority to make purchases pursuant to R2-7-336 and R2-7-337 if the purchase is estimated not to exceed an aggregate amount of \$10,000. Any delegation shall be in writing and may be limited as the State Procurement Administrator directs. Authority delegated by the State Procurement Administrator may be revoked or modified by the State Procurement Administrator.~~

- A. The state procurement administrator shall delegate procurement authority to a state governmental unit based upon the following criteria:
1. The procurement expertise, knowledge, experience, and performance of the state governmental unit's agency chief procurement officer, as identified by the state governmental unit; and
  2. The impact of the delegation on procurement efficiency and effectiveness.

- B. The state procurement administrator shall delegate procurement authority in a written document that specifies all of the following:
  - 1. The agency chief procurement officer,
  - 2. The specific authority delegated,
  - 3. Any limits or restrictions upon the delegated authority,
  - 4. Whether the authority may be further delegated, and
  - 5. The duration of the delegation.
- C. The head of a purchasing agency shall immediately report any significant change regarding the criteria considered under subsection (A) to the state procurement administrator.
- D. A purchasing agency shall exercise delegated authority according to A.R.S. Title 41, Chapter 23 and A.A.C. Title 2, Chapter 7.
- E. An agency chief procurement officer shall submit to the state procurement administrator any procurement that exceeds the agency's delegated authority.
- F. The state procurement administrator may revoke, suspend, or modify delegated authority for failure to comply with A.R.S. Title 41, Chapter 23 or A.A.C. Title 2, Chapter 7, or a significant change regarding the criteria considered under subsection (A).
- G. The state procurement administrator retains all authorities and duties delegated to an agency chief procurement officer at a state governmental unit.

**R2-7-203. Procurement Advisory Groups Agency Chief Procurement Officer**

- ~~A. A procurement advisory group member who participates in any aspect of a specific procurement as an advisory group member shall be prohibited from receiving any benefits directly or indirectly from a contract for such procurement.~~
- ~~B. Specifications prepared by a procurement advisory group shall comply with Article 4 of the Arizona Procurement Code.~~
- ~~C. The Director shall not delegate to a procurement advisory group, or a non state employee member thereof, the authority for the award or administration of any particular contract, or any dispute, claim, or litigation pertaining thereto.~~
- A. An agency chief procurement officer may further delegate procurement authority within the purchasing agency, within the limits specified by the state procurement administrator.
- B. The agency chief procurement officer shall notify the state procurement administrator in writing of employees who have delegated procurement authority.

**R2-7-204. State Employee or Public Officer Use of State Contracts**

State employees and public officers shall not purchase materials or services for their own personal or business use from contracts entered into by the state unless authorized in writing by the director. The determination shall state how the purchase will further the interests of the state.

#### **R2-7-205. Procurement Requests by Purchasing Agencies**

If a purchasing agency determines that a procurement is necessary, the purchasing agency shall submit a procurement request, in writing, to the procurement officer. The procurement request shall be submitted in a manner expressly approved by the agency chief procurement officer.

#### **R2-7-206. Authorized Procurement Officers**

A procurement officer shall perform all procurement duties in accordance with the Arizona Procurement Code and within the authority delegated to the procurement officer in accordance with this Chapter.

#### **R2-7-207. Resolution of Intra-agency Procurement Disputes**

Procurement disputes between a purchasing agency and its agency chief procurement officer shall be resolved by the state procurement administrator.

#### **R2-7-208. Authorization of Electronic Transactions**

- A. An electronic media transaction, involving an electronic record or electronic signature, is authorized if the transaction is consistent with state law.
- B. The state procurement administrator may limit the use of electronic transactions, based on consideration of the best interest of the state.

#### **R2-7-209. Prospective Suppliers List**

- A. The state procurement administrator shall compile and maintain a prospective suppliers list. To be included on the prospective suppliers list, a person shall register with the state procurement office.
- B. The state procurement administrator may remove suppliers from the prospective suppliers list if a notice sent to the supplier is returned. The state procurement administrator shall maintain a record of the date and reason for removal of a supplier from the prospective suppliers list.

### **ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION**

#### **R2-7-301. Definitions Repealed**

In this Article, unless the context otherwise requires:

- 1. "Bid sample" means an item furnished by a bidder to show the characteristics of the item offered in the bid.
- 2. "Capability" means capability at the time of contract award.
- 3. "Clarification" means written or oral communication with a bidder or offeror, including demonstrations or questions and answers, for the sole purpose of information gathering or of eliminating minor informalities or correcting nonjudgmental mistakes in a bid or proposal.

Clarification does not otherwise afford the bidder or offeror the opportunity to alter or change its bid or proposal.

4. "Cost analysis" means the evaluation of cost data.
5. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been actually incurred or that are expected to be incurred by the contractor in performing the contract.
6. "Cost plus a percentage of cost contract" means a contract that, prior to completion of the work, the parties agree that the fee will be a predetermined percentage of the total cost of the work.
7. "Defective data" means data that is inaccurate, incomplete or non-current.
8. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item offered in a bid or proposal.
9. "Discussions" means oral or written negotiations between the state and an offeror during which information is exchanged about specifications, scope of work, terms and conditions and price set forth in the initial proposal. Communication with an offeror for the sole purpose of clarifications does not constitute "discussions".
10. "Incremental award" means an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.
11. "Minor informality" means mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of which does not prejudice other bidders or offerors.
12. "Multiple award" means an award of separate contracts for an indefinite quantity for one or more similar materials or services to more than one bidder or offeror.
13. "Price analysis" means the evaluation of price data.
14. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to those being procured under a contract or subcontract. In this definition, "prices" refers to offered or proposed selling prices, historical selling prices, or current selling prices of the items being purchased.
15. "Regional award" means the division of a contract for one or more similar materials or services into geographic regions.
16. "Small business" means a concern defined in A.R.S. § 41-1001(14).
17. "Solicitation" means an Invitation for Bids, a Request for Technical Offers, a Request for Proposals, a Request for Quotations, or any other invitation or request by which the state invites a person to participate in a procurement.
18. "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work and its qualifications.

**R2-7-302. General Provisions Repealed**

- A. ~~A procurement officer shall neither award a contract nor incur an obligation on behalf of the state unless sufficient funds are available for the specific procurement.~~
- B. ~~Any bid or proposal that is conditioned upon award to the bidder or offeror of both the particular contract being solicited and another state contract shall be deemed nonresponsive or unacceptable.~~

**R2-7-303. Extension of Offer Acceptance Time Repealed**

~~After opening of bids or proposals, the procurement officer may request bidders or offerors who have submitted timely bids or proposals to extend, in writing, the time during which the state may accept their bids or proposals. It is not necessary to receive a written concurrence from all bidders or offerors to award a contract. A written concurrence is required from those bidders or offerors who are to be awarded a contract and that concurrence must be received by the procurement officer before the original bid or proposal expires.~~

**R2-7-304. Purchase Requests Repealed**

- A. ~~If a state governmental unit determines the need for a material or service, it shall prepare a purchase request.~~
- B. ~~Upon receipt of a purchase request from a state governmental unit, a procurement officer is authorized to determine the form and manner in which the procurement shall be solicited, except as otherwise provided in this Chapter.~~
- C. ~~The procurement officer shall reject the purchase request, if after consultation with the requesting state governmental unit, the procurement officer determines that it is not advantageous to the state. The determination shall state the reasons for the rejection and shall accompany the returned purchase request.~~
- D. ~~Disagreements between a using agency and the State Purchasing Administrator concerning actions taken under subsection (B) or (C) of this rule, shall be brought to the Director for resolution. Disagreements between a purchasing agency and its procurement officer shall be resolved in accordance with the agency's delegation of authority.~~

**R2-7-305. Assignment of Rights and Duties Repealed**

~~The rights and duties of a state contract are not transferable or otherwise assignable without the written consent of the procurement officer.~~

**R2-7-306. Change of Name Repealed**

- A. ~~If a contractor requests to change the name in which it holds a state contract, the procurement officer may, upon receipt of a document indicating name change, enter into a written amendment with the~~

~~contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.~~

- ~~B. All change of name amendments shall be reported to the State Procurement Administrator before the date that the amendment becomes effective.~~

**R2-7-307. Installment Purchases Repealed**

~~Installment purchases may be used when advantageous to the state. If an installment purchase is used, provisions for installment purchase payments shall be included in the solicitation document.~~

**R2-7-308. Multiple source Contracting Repealed**

- ~~A. If the procurement officer anticipates that any of the awards described in subsections (B) through (D) of this rule will be made, the solicitation shall include a notification of the right of the state to make such an award and the criteria upon which such an award will be based.~~
- ~~B. An incremental award may be made only if the procurement officer determines in writing that such an award is necessary to obtain the required quantity or delivery.~~
- ~~C. A multiple award shall be made only if the procurement officer determines in writing that a single award is not advantageous to the state. A multiple award shall be limited to the least number of suppliers necessary to meet the requirements of the using agencies.~~
- ~~D. A regional award may be made only if material or service is required to widely scattered locations or a particular requirement is of a local nature.~~

**R2-7-309. Purchase of Items Separately from Construction Contract Repealed**

~~The determination whether materials shall be procured as part of or separate from construction contract shall only be made by the State Procurement Administrator and Assistant Director for Facilities Management.~~

**R2-7-310. Contract Change Orders and Amendments Repealed**

~~Any contract change order or amendment that exceeds \$100,000, or a contract change order or amendment of \$100,000 or less that exceeds \$10,000 or 10% of the contract amount, whichever is greater, may be executed only if the State Procurement Administrator or, in the case of construction, Assistant Director for Facilities Management determines in writing that the change order or amendment is advantageous to the state. This rule shall not apply to the extension of a contract the price of which was competed and evaluated under the contractor's original bid or proposal.~~

**R2-7-311. Arizona State Contracts Repealed**

- ~~A. State governmental units shall use existing Arizona state contracts to satisfy their needs for those materials and services covered by such contracts.~~



- ~~B. If a state governmental unit believes that a particular Arizona state contract does not satisfy its needs, the state governmental unit may not otherwise purchase the material or service without the written approval from the State Procurement Administrator. A copy of the approval shall be filed in the corresponding purchase order file maintained by the state governmental unit.~~

#### **R2-7-312. Prospective Vendors Lists Repealed**

- ~~A. The State Procurement Administrator shall compile and maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a state contract.~~
- ~~B. Persons desiring to be included on the prospective vendors list shall notify the State Procurement Administrator. Upon notification, the State Procurement Administrator shall mail or otherwise provide the person with a vendor registration form. The person shall complete the vendor registration form and return it to the State Procurement Office. Within five days after receiving the vendor registration form, the State Procurement Administrator shall add the person to the prospective vendors list unless the State Procurement Administrator makes a written determination that inclusion is not advantageous to the state.~~
- ~~C. Persons that fail to respond to solicitations for two consecutive procurements of similar items may be removed from the applicable vendors list after mailing a notice to the business. Persons may be reinstated upon written request.~~

#### **R2-7-313. Invitation for Bids Repealed**

- ~~A. In all competitive sealed bidding procurements, the purchasing agency shall issue an Invitation for Bids on a form approved by the State Procurement Administrator or, in the case of construction, the Assistant Director for Facilities Management. Invitation for Bids shall be issued at least 14 days before the time and date set for bid opening in the Invitation for Bids unless a shorter time is deemed necessary for a particular procurement as determined in writing by the State Procurement Administrator or, in the case of construction, the Assistant Director for Facilities Management.~~

##### **B. Content**

- ~~1. The Invitation for Bids shall include the following:~~
  - ~~a. Instructions and information to bidders concerning the bid submission requirements, including the time and date set for bid opening, the address of the office to which bids are to be received, the period that the bid shall remain open, and any other special information;~~
  - ~~b. The purchase description, specifications, evaluation criteria, delivery or performance schedule, and inspection and acceptance requirements; and~~
  - ~~c. The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.~~

- ~~2. If the Invitation for Bids incorporates documents by reference, the Invitation for Bids shall specify where such documents may be obtained.~~
  - ~~3. The Invitation for Bids shall require the acknowledgement by the bidder of the receipt of any amendments issued.~~
  - ~~4. An Invitation for Bids may require the submission of bid samples, descriptive literature, technical data and may require inspection or testing of a product before award.~~
- ~~C. The purchasing agency shall mail or otherwise furnish Invitations for Bids or Notices of the Availability of Invitation for Bids to all prospective vendors registered at the State Procurement Office for the specific material, service or construction being bid.~~
- ~~D. A copy of the Invitation for Bids shall be made available for public inspection at the procurement officer's office.~~

#### **R2-7-314. Pre-bid Conferences Repealed**

~~A procurement officer may conduct a pre-bid conference within a reasonable time but not less than seven days before the bid opening to explain the procurement requirements. Statements made at the pre-bid conference shall not be considered amendments to the invitation for bids unless a written amendment is issued pursuant to R2-7-315.~~

#### **R2-7-315. Amendments to Invitations for Bids Repealed**

- ~~A. An amendment to an Invitation for Bids shall be issued if necessary to:~~
- ~~1. Make changes in the Invitation for Bids;~~
  - ~~2. Correct defects or ambiguities; or~~
  - ~~3. Furnish to other bidders information given to one bidder if the information will assist the other bidders in submitting bids or if the lack of the information will prejudice the other bidders.~~
- ~~B. Amendments to Invitations for Bids shall be so identified and shall be sent to all persons to whom the procurement officer distributed an Invitation for Bids.~~
- ~~C. Amendments shall require that the bidder acknowledge receipt of the amendment by signing and returning the amendment with the bid or before the time and date set for opening.~~
- ~~D. Amendments shall be issued within a reasonable time before bid opening to allow prospective bidders to consider them in preparing their bids. If the time and date set for bid opening does not permit sufficient time for bid preparation, the time and date for bid opening shall be extended in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.~~

#### **R2-7-316. Pre-opening Modification or Withdrawal of Bids Repealed**

- ~~A. A bidder may modify or withdraw its bid at any time before bid opening if the modification or withdrawal is received in writing before the time and date set for bid opening in the location designated in the Invitation for Bids for receipt of bids. A bidder or the bidder's authorized~~

~~representative may withdraw the bid in person if, before the time and date set for bid opening, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.~~

~~B. All documents concerning a modification or withdrawal of a bid shall be retained in the appropriate procurement file.~~

**R2-7-317. ~~Late Bids, Late Withdrawals, and Late Modifications~~ Repealed**

~~A. A bid, modification or withdrawal is late if it is received at the location designated in the Invitation for Bids for receipt of bids after the time and date set for bid opening.~~

~~B. A late bid, late modification, or late withdrawal shall be rejected unless the bid, modification, or withdrawal is received before contract award at the location designated in the Invitation for Bids for receipt of bids and would have been timely received but for the action or inaction of state personnel directly serving the purchasing agency.~~

~~C. Bidders submitting bids, modifications or withdrawals that are rejected as late shall be so notified as soon as practicable.~~

~~D. Documentation concerning a late bid, late modification, or late withdrawal shall be retained in the appropriate procurement file.~~

**R2-7-318. ~~Receipt, Opening, and Recording of Bids~~ Repealed**

~~A. Except as provided in subsection (B) of this rule, each bid and modification shall be time stamped upon receipt and stored unopened in a secure place until the time and date set for bid opening.~~

~~B. An envelope that is not marked as a bid or does not identify the bidder or solicitation may be opened solely for the purpose of identification. Record shall be made on the envelope of the reason for opening it, the date and time it was opened, the solicitation to which the bid responded, and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the procurement file.~~

~~C. Bids and modifications shall be opened publicly in the sequence that they were received and in the presence of one or more witnesses at the time, date, and location designated in the Invitation for Bids for bid opening. The name of each bidder, the bid price, and other information deemed appropriate by the procurement officer shall be read aloud and recorded on a bid abstract. The name of the required witness shall also be recorded. The bid abstract shall be available for public inspection.~~

~~D. Bids shall not be available for public inspection before contract award pursuant to A.R.S. § 41-2533(D). After contract award, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with R2-7-104.~~

**R2-7-319. ~~Mistakes in Bids~~ Repealed**

- ~~A. A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in R2-7-316.~~
- ~~B. After bid opening, a bid mistake based on an error in judgment may not be corrected or withdrawn. Other bid mistakes may be corrected or withdrawn pursuant to subsections (C) through (E) of this rule.~~
- ~~C. After bid opening, the procurement officer shall either waive minor informalities in a bid or allow the bidder to correct them if correction is advantageous to the state.~~
- ~~D. After bid opening, the bid may not be withdrawn and shall be corrected to the intended bid if a bid mistake and the intended bid are evident on the face of the bid.~~
- ~~E. After bid opening, the State Procurement Administrator or, in the case of construction, the Assistant Director for Facilities Management may permit a bidder to withdraw a bid if:~~
- ~~1. A nonjudgmental mistake is evident on the face of the bid but the intended bid is not evident; or~~
  - ~~2. The bidder establishes by clear and convincing evidence that a nonjudgmental mistake was made.~~
- ~~F. Mistakes shall not be corrected after award of the contract except where the State Procurement Administrator or Assistant Director for Facilities Management makes a written determination that it would be unconscionable not to allow the mistake to be corrected.~~
- ~~G. If correction or withdrawal of a bid after bid opening is permitted or denied under subsections (D) and (E) of this rule, the State Procurement Administrator or, in the case of construction, the Assistant Director for Facilities Management shall prepare a written determination showing that the relief was permitted or denied under these rules and regulations.~~

#### **R2-7-320. Bid Evaluation and Award Repealed**

- ~~A. The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation for Bids. Unless otherwise provided in the Invitation for Bids, award may be made by individual line item, by group of line items, or for the aggregate total of all line items.~~
- ~~B. A product acceptability evaluation may be conducted to determine whether a bidder's product is acceptable as set forth in the Invitation for Bids but not to determine whether one bidder's product is superior to another bidder's product. Any bidder's offering that does not meet the acceptability requirements shall be rejected as nonresponsive.~~
- ~~C. Bids shall be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria that are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, energy cost, ownership cost, and other identifiable costs or life cycle cost formulae. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the procurement officer has available concerning future use.~~

- ~~D. A contract may not be awarded to a bidder submitting a higher quality item than that designated in the Invitation for Bids unless the bidder is also the lowest bidder as determined under subsection (C) of this rule. The procurement officer may seek clarification of a bid but this rule does not permit discussions with any bidder.~~
- ~~E. If there are two or more low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the Invitation for Bids, award shall be made by drawing lots. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least one person other than the procurement officer supervising the drawing.~~
- ~~F. A record showing the basis for determining the successful bidder shall be retained in the procurement file.~~
- ~~G. A written notice of award shall be sent to the successful bidder. In procurements over \$100,000, each unsuccessful bidder shall be notified of the award. Notice of award shall be made available to the public.~~

#### **R2-7-321. Only One Bid Received Repealed**

~~If only one responsive bid is received in response to an Invitation for Bids, an award may be made to the single bidder if the procurement officer determines in writing that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise the bid may be rejected pursuant to the provisions of A.R.S. § 41-2539 and:~~

- ~~1. New bids may be solicited; or~~
- ~~2. The proposed procurement may be cancelled; or~~
- ~~3. If the procurement officer determines in writing that the need for the material or service continues and the acceptance of the one bid is not advantageous to the state, the procurement may then be conducted under A.R.S. §§ 41-2536 or 41-2537 as appropriate.~~

#### **R2-7-322. Multi-step Sealed Bidding Repealed**

- ~~A. The multi-step sealed bidding method may be used if the procurement officer determines in writing that:~~
- ~~1. Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between each bidder and the state;~~
  - ~~2. Definite criteria exist for evaluation of technical offers;~~
  - ~~3. More than one technically qualified source is expected to be available; and~~
  - ~~4. A fixed price contract will be used.~~
- ~~B. The procurement officer may hold a conference with bidders before submission or at any time during the evaluation of the unpriced technical offers.~~

## **R2-7-323. Phase One of Multi-step Sealed Bidding Repealed**

~~A. Multi-step sealed bidding shall be initiated by the issuance of an Invitation to Submit Technical Offers.~~

~~The Invitation to Submit Technical Offers shall be issued according to R2-7-313 and shall contain the following information:~~

- ~~1. Notice that the procurement shall be conducted in two phases and that priced bids will be considered only in the second phase and only from those offerors whose unpriced technical offers are found acceptable in the first phase;~~
- ~~2. The best description of the material or services desired;~~
- ~~3. The requirements for the technical offers, such as drawings and descriptive literature;~~
- ~~4. The criteria for evaluating technical offers;~~
- ~~5. The closing date and time for receipt of technical offers and the location where offers should be delivered or mailed; and~~
- ~~6. A statement that discussions may be held.~~

~~B. The Invitation to Submit Technical Offers may be amended after the submission of the unpriced technical offers. The amendment shall be distributed only to bidders who submitted unpriced technical offers, and those bidders shall be permitted to submit new unpriced technical offers or to amend the offers already submitted. If an amendment materially changes the procurement, the Invitation to Submit Technical Offers shall be cancelled in accordance with A.R.S. § 41-2539.~~

~~C. Unpriced technical offers shall not be opened publicly but shall be opened in the presence of two or more procurement officials. Late technical proposals shall not be considered except under the circumstances set forth in R2-7-317(B). The contents of unpriced technical offers shall not be disclosed to unauthorized persons.~~

~~D. Unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the Invitation to Submit Technical Offers and shall be determined to be either acceptable or potentially acceptable for further consideration or unacceptable. A determination that an unpriced technical proposal is unacceptable shall be in writing, state the basis of the determination and be retained in the procurement file. If the procurement officer determines a bidder's unpriced technical offer is unacceptable, the procurement officer shall notify that bidder of the determination and that the bidder shall not be afforded an opportunity to amend its technical offer.~~

~~E. The procurement officer may conduct discussions with any bidder who submits an acceptable or potentially acceptable technical offer. During discussions, the procurement officer shall not disclose any information derived from one unpriced technical offer to any other bidder. After discussions, the procurement officer shall establish a closing date for receipt of final technical offers and shall notify in writing bidders submitting acceptable or potentially acceptable offers of the closing date. The procurement officer shall keep a record of all discussions.~~

~~F. After receipt of final technical offers, the procurement officer shall determine whether the technical offers are acceptable for consideration in phase two or unacceptable.~~

G. At any time during phase one, offers may be withdrawn.

**R2-7-324. Phase Two of Multi-step Sealed Bidding Repealed**

- A. ~~Upon completion of phase one, the procurement officer shall issue an Invitation for Bids and conduct Phase Two under R2-7-313 through R2-7-320 as a competitive sealed bidding procurement, except that the Invitation for Bids shall be issued only to bidders whose technical offers were determined to be acceptable in phase one.~~
- B. ~~Unpriced technical offers of unsuccessful bidders shall be open to public inspection except to the extent set forth in R2-7-318.~~

**R2-7-325. Competitive Sealed Proposals Repealed**

- A. ~~The State Procurement Administrator shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the state. The State Procurement Administrator may make a class determination that it is either not practicable or not advantageous to the state to procure specified types of materials or services by competitive sealed bidding. The State Procurement Administrator may modify or revoke a class determination at any time.~~
- B. ~~Competitive sealed bidding may not be practicable or advantageous if it is necessary to:~~
- ~~1. Use a contract other than a fixed price type; or~~
  - ~~2. Conduct oral or written discussions with offerors concerning technical and price aspects of their proposals; or~~
  - ~~3. Afford offerors an opportunity to revise their proposals; or~~
  - ~~4. Compare the different price, quality, and contractual factors of the proposals submitted; or~~
  - ~~5. Award a contract in which price is not the determining factor.~~

**R2-7-326. Request for Proposals Repealed**

- A. ~~A Request for Proposals shall set forth those factors listed in R2-7-313(B) that are applicable and shall also state:~~
- ~~1. The type of materials or services required and a description of the work involved;~~
  - ~~2. The type of contract to be used;~~
  - ~~3. Whether cost or pricing data is required;~~
  - ~~4. That offerors may designate as trade secrets or proprietary data portions of the proposals;~~
  - ~~5. That discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award;~~
  - ~~6. The minimum information that the proposal shall contain; and~~
  - ~~7. The closing date and time for receipt of proposals.~~

~~B. A Request for Proposals shall be issued at least 14 days before the closing date and time for receipt of proposals unless a shorter time is determined necessary in writing by the State Procurement Administrator.~~

~~C. Request for Proposal forms shall be approved by the State Procurement Administrator.~~

~~D. Notice of the Request for Proposals shall be issued in accordance with R2-7-313.~~

~~E. Vendors lists compiled and maintained in accordance with R2-7-312 shall serve as a basis for soliciting competitive sealed proposals.~~

~~F. Before submission of initial proposals, amendments to Requests for Proposals shall be made in accordance with R2-7-315. After submission of proposals, amendments may be made in accordance with R2-7-323(B).~~

#### **R2-7-327. Pre-proposal Conferences Repealed**

~~Pre-proposal conferences may be convened in accordance with R2-7-314.~~

#### **R2-7-328. Late Proposals, Late Modifications or Late Withdrawals Repealed**

~~A. A proposal received after the closing date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in R2-7-317(B). A best and final offer received after the closing date and time for receipt of best and final offers is late and shall not be considered except under the circumstances set forth in R2-7-317(B).~~

~~B. A modification of a proposal received after the closing date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in R2-7-317(B).~~

~~C. A modification of a proposal resulting from an amendment issued after the closing date and time for receipt of proposals or a modification of a proposal resulting from discussions during negotiations shall be considered if received by the closing date and time set forth in the amendment or by the closing date and time for submission of best and final offers, whichever is applicable. If the modifications described in this subsection are received after the respective date and time described in this subsection, the modifications are late and shall not be considered except under the circumstances set forth in R2-7-317(B).~~

~~D. A proposal may be withdrawn at any time before the closing date and time for receipt of best and final offers. Withdrawal of a proposal after submission of best and final offers is permissible only in accordance with R2-7-333.~~

#### **R2-7-329. Receipt of Proposals Repealed**

~~A. Each proposal received shall be date and time stamped and retained in a secure place until the closing date and time for receipt of proposals. A Register of Proposals shall be prepared and shall set forth the name of each offeror and the identity of the Request for Proposals for which the proposal was submitted.~~



- ~~B. Proposals shall be opened in the presence of witnesses. The name of each offeror shall be publicly read and recorded. Before contract award, proposals and modifications shall be shown only to state personnel having a legitimate interest in them or persons assisting the state in evaluation.~~
- ~~C. If only one proposal is received in response to a Request for Proposals, the procurement officer may either make an award in accordance with R2-7-334 or, if time permits, resolicit.~~

**R2-7-330. Evaluation of Proposals Repealed**

- ~~A. Evaluation of the proposals shall be based on the evaluation factors set forth in the Request for Proposals.~~
- ~~B. For the purpose of conducting discussions, the procurement officer shall determine, in accordance with subsection (A) of this rule, that proposals are either reasonably susceptible of being selected for award or unacceptable. A determination that a proposal is unacceptable shall be in writing, state the basis of the determination, and be retained in the procurement file. If the procurement officer determines that an offeror's proposal is not reasonably susceptible of being selected for award, the procurement officer shall notify that offeror of the determination and that the offeror shall not be afforded an opportunity to modify its offer.~~

**R2-7-331. Discussions with Individual Offerors Repealed**

~~The procurement officer shall establish procedures and schedules for conducting discussions. Disclosure of one offeror's price to another and any information derived from competing proposals is prohibited. The procurement officer shall keep a record of all discussions in a manner prescribed by the State Procurement Administrator.~~

**R2-7-332. Best and Final Offers Repealed**

~~If discussions are conducted pursuant to R2-7-331, the procurement officer shall issue a written request for best and final offers. The request shall set forth the date, time and place for the submission of best and final offers. Best and final offers shall be requested only once, unless the State Procurement Administrator makes a written determination that it is advantageous to the state to conduct further discussions or change the state's requirements. The request for best and final offers shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer.~~

**R2-7-333. Mistakes in Proposals Repealed**

- ~~A. Prior to the time and date set for receipt of best and final offers, any offeror with whom discussions have been held may withdraw the proposal or correct any mistake by modifying the proposal.~~
- ~~B. After receipt of best and final offers, an offeror may withdraw a proposal or correct a mistake in accordance with R2-7-319(B) through (G).~~

**R2-7-334. Contract Award Repealed**

- ~~A. The procurement officer shall award a contract to the offeror whose proposal is determined in writing to be most advantageous to the state based on the factors set forth in the Request for Proposals. The determination shall explain the basis of the award.~~
- ~~B. If the contract awarded exceeds \$100,000, each unsuccessful offeror shall be notified in writing of the award.~~
- ~~C. After contract award the proposals shall be open for public inspection except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with R2-7-104.~~

**R2-7-335. Small Business Set-aside Repealed**

- ~~A. When practical and except as provided under subsection (D) of this rule, purchases estimated to cost less than \$10,000 shall be restricted to small businesses in accordance with the procedures set forth in subsections (B) and (C) of this rule. Purchases shall be conducted in accordance with R2-7-336.~~
- ~~B. If a request for quotations is issued for the purchase, it shall contain a notice that only small businesses as defined in these rules may respond. Any request for quotations that requires written quotes shall request bidders to self-certify in their quotes that they are a small business. If verbal quotes are accepted in response to a written request for quotations or if the bidder fails to certify in a written quote that it is a small business, the procurement officer shall confirm before awarding a contract that the intended awardee is a small business. A bidder shall be presumed to be a small business if it has registered on the state's prospective vendors list as a small business. The procurement officer shall make a written notation in the contract file of that confirmation.~~
- ~~C. If a request for quotation is not issued, the procurement officer shall verbally request confirmation that the bidder contacted to offer a quote is a small business. The procurement officer shall confirm before awarding a contract for a purchase that the intended awardee is a small business and shall make a written notation in the contract file of that confirmation.~~
- ~~D. It is declared to be impractical for the procurement officer to determine a bidder's status as a small business under the following circumstances:~~
- ~~1. Sole source procurements as defined in A.R.S. § 41-2536;~~
  - ~~2. Emergency procurements as defined in A.R.S. § 41-2537;~~
  - ~~3. Purchases not expected to exceed \$1,000;~~
  - ~~4. Purchases delegated within a purchasing agency to field offices; and~~
  - ~~5. Purchases that have been unsuccessfully competed under subsections (B) and (C) of this rule, including failure to obtain fair and reasonable prices.~~

**R2-7-336. Procurements Not Exceeding an Aggregate Amount of \$25,000 Repealed**

~~A. Purchases estimated to cost from \$10,000 to \$25,000 shall be made in accordance with the following procedures:~~

- ~~1. Purchasing agencies that are not authorized by the state procurement administrator to utilize the state procurement office's electronic notification/distribution system shall either conduct purchases according to A.R.S. §§ 41-2533 or 41-2534 for purchases estimated to cost from \$10,000 to \$25,000 or request that the state procurement office conduct the procurement for them~~
- ~~2. If practical, purchasing agencies authorized by the state procurement administrator to utilize the electronic notification/distribution system shall conduct purchases estimated to cost from \$10,000 to \$25,000 in accordance with the procedures set forth in subsections (A)(3) through (10) of this rule.~~
- ~~3. The procurement officer shall issue a request for quotations. The request for quotations shall be transmitted to the state procurement office's electronic notification/distribution system.~~
- ~~4. Requests for quotations on the electronic notification/distribution system shall be retained on that system for a period of not less than 11 days as defined in R2-7-102(5) and computed pursuant to A.R.S. § 1-243.~~
- ~~5. Bidders shall submit quotes on a form approved by the state procurement administrator and the quotes shall be recorded and placed in the procurement file.~~
- ~~6. Award shall be made to the responsible bidder submitting the quotation which is most advantageous to the state and conforms to the solicitation.~~
- ~~7. If only one responsive quotation is received, a statement shall be included in the contract file setting forth the basis for determining that the price is fair and reasonable. This determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases or current price lists.~~
- ~~8. If the procurement officer determines that it is not practical to utilize the procedures set forth in subsections (A)(3) through (6) of this rule, the procurement officer shall document in writing the reasons that compliance with those procedures is impractical. A procurement officer who determines that it is impractical to comply with subsection (A)(3) shall follow the procedures set forth in subsection (B) of this rule. A procurement officer who determines that it is impractical to comply with subsection (A)(4) shall transmit the request for quotations to the electronic notification/distribution system and retain it on that system for a number of days reasonable under the circumstances.~~
- ~~9. The procurement officer may determine that an emergency exists under A.R.S. § 41-2537 as the basis for not placing the purchase on the electronic notification/distribution system. The procurement officer shall report the emergency procurement in writing to the state procurement office within two days of making the determination that an emergency existed.~~
- ~~10. Any sole source procurement under A.R.S. § 41-2536 shall be approved in advance by the state procurement office.~~

- ~~11. Purchases estimated to cost less than \$10,000 may be placed on the electronic notification/distribution system by purchasing agencies that are connected to the system.~~
  - ~~12. Solicitation notices of the availability of solicitations issued pursuant to R2-7-313(C) and R2-7-326(D) for purchases that exceed \$25,000 may be placed on the electronic notification/distribution system and sent to those registered vendors capable of receiving them electronically.~~
- ~~B. If practical, purchases estimated to cost from \$5,001 to \$9,999 shall be made in accordance with the following procedures:~~
- ~~1. If applicable under R2-7-335, bidders shall be limited to small businesses.~~
  - ~~2. At least three bidders shall be solicited to submit written quotations.~~
  - ~~3. The procurement officer shall issue a Request for Quotations to a reasonable number of vendors. The Request for Quotation need not be sent to all vendors on the vendors list but shall be sent to any vendor who specifically requests the Request for Quotation. Vendors solicited shall be rotated to the extent necessary to give all vendors a fair and equal opportunity to compete.~~
  - ~~4. The procurement officer shall issue the request for quotation a reasonable time as determined under the circumstances of each case by the procurement officer.~~
  - ~~5. Quotes shall be submitted in accordance with subsection (A)(5) of this rule. Award shall be made in accordance with subsection (A)(6) or, where applicable, subsection (A)(7) of this rule.~~
- ~~C. If practical, purchases estimated to cost from \$1,001 to \$5,000 shall be made in accordance with the following procedures:~~
- ~~1. If applicable under R2-7-335, bidders shall be limited to small businesses.~~
  - ~~2. At least three bidders shall be solicited to submit verbal or written quotations.~~
  - ~~3. Quotations need not be solicited from all vendors on the vendors list but shall be solicited from any vendor who specifically requests to submit a quotation. Vendors solicited shall be rotated to the extent necessary to give all vendors a fair and equal opportunity to compete.~~
  - ~~4. Procurements made under this rule shall also comply with R2-7-336(A)(4) and (5).~~
  - ~~5. Quotations shall be recorded and a record sufficient to facilitate auditing of the purchasing agency shall be placed in the procurement file.~~
- ~~D. For purchases of \$1,000 or less, purchasing agencies shall utilize procedures providing for adequate and reasonable competition and for making records to facilitate auditing of the purchasing agency.~~
- ~~E. For purposes of a multi term contract, the total amount of the contract over the full term, including the amounts of any options to extend, will determine whether it is subject to this Section.~~

**R2-7-337. Other Procurements Not Exceeding an Aggregate Amount of \$10,000 Repealed**

- ~~A. If material, service or construction is available from only one vendor, and the purchase is estimated to cost less than \$10,000, the sole source procurement method set forth in A.R.S. § 41-2536 shall be used, except that head of the purchasing agency or the State Procurement Administrator may make the~~

~~determination that the sole source method is appropriate. This subsection does not apply to procurements described in R2-7-336(C).~~

- ~~B. If purchases of services specified in A.R.S. §§ 41-2513 and 41-2578 are estimated to cost less than \$10,000, the methods specified in this rule may be used in lieu of the procedure specified in A.R.S. §§ 41-2538 and 41-2578.~~

#### **R2-7-338. Sole Source Procurement Repealed**

- ~~A. A using agency seeking a sole source procurement shall prepare a written request documenting the existence of a sole source condition, including the specific efforts made to determine the availability of any other source. The request shall include an explanation of the procurement need. The request shall be signed by a designated official of the using agency at the assistant director level, its equivalent or above.~~
- ~~B. Except as provided in R2-7-337(A), a sole source procurement may be conducted only if the Director determines in writing before the initiation of the procurement that a sole source procurement is required. Sole source procurement shall not be used unless there is clear and convincing evidence that there is only one source for the required material or service and that no other type of material or service will satisfy the requirements of the using agency. The using agency requesting sole source procurement shall provide written evidence to support a sole source determination.~~
- ~~C. The procurement officer shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the state. The procurement officer shall use the state's terms and conditions as the contract document unless the procurement officer receives an exemption from the State Procurement Administrator.~~
- ~~D. The provisions of this rule apply to all sole source procurements unless emergency conditions exist as defined in A.R.S. § 41-2537.~~

#### **R2-7-339. Emergency Procurements Repealed**

- ~~A. An emergency condition may arise from, but is not limited to, floods, epidemics, riots, or equipment failures. An emergency condition creates an immediate and serious need for materials, services, or construction that cannot be met through normal procurement methods and that seriously threatens the functioning of state government, the preservation or protection of property or the health or safety of any person.~~
- ~~B. An emergency procurement shall be limited to those materials, services, or construction necessary to satisfy the emergency need.~~

#### **R2-7-340. Emergency Procurement Procedure Repealed**

- ~~A. A using agency seeking an emergency procurement shall prepare a written request documenting the existence of an emergency condition and explaining the procurement need. The request shall be signed by a designated official of the using agency at the assistant director level, its equivalent or above.~~
- ~~B. The request shall be submitted to the Assistant Director for Finance, with a copy to the State Procurement Administrator.~~
- ~~C. Except as provided in subsections (E) and (F) of this rule, the Director shall determine in writing whether to grant the request. If the request is approved, the determination shall state the manner in which the procurement is to be effected, whether procurement authority is delegated to the using agency, and the limits of the determination.~~
- ~~D. A copy of each request and determination processed under this procedure shall be kept on file in the using agency requesting the emergency procurement, the office of the Director, and the State Procurement Office.~~
- ~~E. If the nature of the emergency does not permit submission of a written request, the using agency may make a verbal request to the Director who may make a verbal determination and delegation. The request required under subsection (A) of this rule shall be submitted to the Director within two working days following the initiation of the emergency procurement.~~
- ~~F. The Director may approve a written request subsequent to the procurement if:~~
- ~~1. The emergency necessitated immediate response and it was impracticable to contact the Director;~~
  - ~~2. The procurement was made with as much competition as was practicable under the circumstances;~~
  - ~~3. The price paid was reasonable; and~~
  - ~~4. The request required under subsection (A) of this rule was submitted to the Director within two working days following the initiation of the emergency procurement.~~

**~~R2-7-341. Competitive Selection Procedures for Services of Clergy, Physicians, Dentists, Legal Counsel, or Certified Public Accountants Repealed~~**

- ~~A. The services of clergy, physicians, dentists, legal counsel, or certified public accountants, as specified in A.R.S. § 41-2513, shall be procured in accordance with R2-7-342 through R2-7-348, except as authorized under A.R.S. §§ 41-2535, 41-2536 or 41-2537.~~
- ~~B. Price shall be an evaluation factor in the procurements of the services specified in subsection (A) of this rule unless the State Procurement Administrator determines in writing that price as an evaluation factor is either not practicable or not advantageous to the state.~~

**~~R2-7-342. Statement of Qualifications Repealed~~**

- ~~A. If the services specified in R2-7-341 are needed on a recurring basis, the procurement officer may solicit persons engaged in providing the services to submit annual statements of qualifications on a prescribed form that shall include the following information:~~
- ~~1. Technical education and training;~~

~~2. General or special experience, certifications, licenses, and memberships in professional associations, societies, or boards;~~

~~3. An expression of interest in providing a particular service; and~~

~~4. Any other pertinent information requested by the procurement officer.~~

~~B. Persons who have submitted statements of qualifications may amend those statements at any time by filing a new statement.~~

**R2-7-343. Request for Proposals Repealed**

~~The Request for Proposals shall be in accordance with R2-7-326. The Requests for Proposals shall also be distributed to persons who have submitted statements of qualifications under R2-7-342 for the particular services sought.~~

**R2-7-344. Receipt of Proposals Repealed**

~~Proposals shall be received and opened in accordance with R2-7-329. Mistakes in proposals may be corrected or proposals withdrawn in accordance with R2-7-333. Late proposals, late modifications, or late withdrawals shall be considered in accordance with R2-7-328.~~

**R2-7-345. Evaluation of Proposals Repealed**

~~Proposals shall be evaluated in accordance with R2-7-330.~~

**R2-7-346. Discussions with Individual Offerors Repealed**

~~The purchasing agency conducting the procurement may conduct discussions with any offeror whose proposal is reasonably susceptible to being selected for award. Discussions shall be conducted in accordance with R2-7-331. Best and final offers shall be requested in accordance with R2-7-332.~~

**R2-7-347. Evaluation and Contract Award Where Price is an Evaluation Factor Repealed**

~~If price is one of the evaluation factors for contract award set forth in the Request for Proposals, the procurement officer shall evaluate proposals and award the contract in accordance with R2-7-334.~~

**R2-7-348. Selection and Contract Award Where Price is not an Evaluation Factor Repealed**

~~A. If price is not a factor, the purchasing agency shall determine in writing the acceptable proposals and rank the three most qualified offerors.~~

~~B. The offeror determined to be best qualified shall submit cost or pricing data to the purchasing agency.~~

~~C. The purchasing agency shall negotiate a contract with the best qualified offeror at compensation determined in writing to be fair and reasonable.~~

~~D. If the head of the purchasing agency and the best qualified offeror fail to negotiate a contract, the head of the purchasing agency shall notify the offeror in writing of the termination of negotiations. The head of the purchasing agency may then enter into negotiations with the next most qualified offeror. If negotiations fail, they shall be terminated, the offeror given notice, and negotiations commenced with the next most qualified offeror.~~

~~E. If the purchasing agency is unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, proposals may be resolicited or additional offerors may be selected based on original, acceptable proposals in the order of their qualification ranking. Negotiations may continue until a contract is awarded.~~

~~F. A written record in a manner prescribed by the State Procurement Administrator shall be maintained in the procurement file.~~

#### **R2-7-349. Annual Report Repealed**

~~Each purchasing agency shall submit annually to the Director a report of all service contracts awarded under A.R.S. § 41-2538 in the preceding fiscal year. The report shall identify the parties to the contract, the contract amount, duration, and the services performed.~~

#### **R2-7-350. Cancellation of Solicitations; Rejection of Bids or Proposals Repealed**

~~Each solicitation issued by the state shall state that the solicitation may be cancelled or bids or proposals rejected.~~

#### **R2-7-351. Cancellation of Solicitation Before the Date and Time for Receipt of Bids and Proposals Repealed**

~~A. Before the date and time that receipt of bids or proposals are due, a solicitation may be cancelled in whole or in part if the procurement officer determines in writing that cancellation is advantageous to the state.~~

~~B. If a solicitation is cancelled before the date and time that receipt of bids or proposals are due, notice of cancellation shall be sent to all persons to whom the procurement officer distributed a solicitation. The notice of cancellation shall identify the solicitation and briefly explain the reason for cancellation.~~

~~C. Any bids or proposals that have been received shall be returned unopened to the bidders or offerors.~~

#### **R2-7-352. Cancellation of Solicitation After Receipt of Bids or Proposals Repealed**

~~A. After receipt of bids or proposals but before award, a solicitation may be cancelled and all bids or proposals may be rejected in whole or in part if the procurement officer determines in writing that cancellation and rejection are advantageous to the state.~~

~~B. A notice of cancellation and rejection shall be sent to all bidders or offerors submitting bids or proposals in accordance with R2-7-351(B).~~



- ~~C. Bids or proposals received under the cancelled solicitation shall be retained in the procurement file. If the purchasing agency intends to issue another solicitation within a reasonable time after cancellation for the same materials, services or construction as under the cancelled solicitation, the purchasing agency may withhold from public inspection bids or proposals submitted under the cancelled solicitation if the procurement officer makes a written determination that such action is in the state's best interest. After award of a contract under the second solicitation, bids or proposals submitted in response to the cancelled solicitation shall be open for public inspection unless non disclosure is required under R2-7-105(E).~~
- ~~D. The determination to cancel a solicitation and reject bids or proposals shall be made a part of the procurement file and shall be available for public inspection.~~

### **R2-7-353. Rejection of Individual Bids or Proposals Repealed**

- ~~A. A bid may be rejected if:~~
- ~~1. The bidder is determined to be nonresponsible pursuant to R2-7-354; or~~
  - ~~2. The bid is nonresponsive in accordance with R2-7-320.~~
- ~~B. A proposal or quotation may be rejected if:~~
- ~~1. The person responding to the solicitation is determined to be nonresponsible pursuant to R2-7-354;~~
  - ~~or~~
  - ~~2. It is unacceptable;~~
  - ~~3. The proposed price is unreasonable; or~~
  - ~~4. It is otherwise not advantageous to the state.~~
- ~~C. Bidders or offerors whose bids or proposals are rejected under subsection (A) or (B) of this rule shall be notified in writing for the rejection. Record of the rejection shall be made part of the procurement file.~~

### **R2-7-354. Responsibility of Bidders and Offerors Repealed**

- ~~A. A procurement officer shall determine that a bidder or offeror is responsible before awarding a contract to that bidder or offeror. The procurement officer's signature on the contract constitutes a determination that the bidder or offeror awarded the contract is responsible.~~
- ~~B. Factors to be considered in determining if a bidder or offeror is responsible include:~~
- ~~1. The bidder's or offeror's financial, physical, personnel or other resources, including subcontracts;~~
  - ~~2. The bidder's or offeror's record of performance and integrity;~~
  - ~~3. Whether the bidder or offeror is qualified legally to contract with the state; and~~
  - ~~4. Whether the bidder or offeror supplied all necessary information concerning its responsibility.~~
- ~~C. The procurement officer may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.~~
- ~~D. If a procurement officer determines that a bidder or offeror is nonresponsible, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly~~

~~sent to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.~~

**R2-7-355. Prequalification Repealed**

- ~~A. A prospective contractor need not be prequalified to be awarded a contract. Prequalification does not represent a determination of responsibility.~~
- ~~B. The existence of a qualified product list pursuant to R2-7-404(D)(2) does not constitute prequalification of any prospective supplier of that product.~~

**R2-7-356. Bid and Performance Bonds for Material or Service Contracts Repealed**

- ~~A. Bid and performance bonds or other security may be required for material or service contracts if the procurement officer determines that such requirement is advantageous to the state. The requirement for bonds or other security shall be included in the solicitation.~~
- ~~B. Acceptable bid or performance security shall be limited to:
  - ~~1. A surety bond executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Director of the Department of Insurance pursuant to A.R.S. Title 20, Chapter 2, Article 1, and in a form prescribed by R2-7-505; or~~
  - ~~2. A certified or cashier's check.~~~~
- ~~C. Bid or performance bonds shall not be used as a substitute for a determination of bidder responsibility.~~
- ~~D. If a bid is withdrawn at any time before bid opening, any bid security shall be returned to the bidder.~~

**R2-7-357. Submission of Cost or Pricing Data Repealed**

- ~~A. Cost or pricing data shall be submitted except as provided in subsection (E) of this rule if the procurement officer determines in writing that:
  - ~~1. The amount of an original or adjusted price of a contract to be awarded by competitive sealed proposals, emergency procurement, sole source procurement, or pursuant to A.R.S. § 41-2578(D)(1) may exceed \$100,000; or~~
  - ~~2. The price adjustment of a contract awarded by competitive sealed bidding will result in an increase in cost in excess of \$100,000; or~~
  - ~~3. If the submission of cost or pricing data is otherwise advantageous to the state.~~~~
- ~~B. Cost or pricing data shall be submitted to the procurement officer prior to the commencement of price negotiations at the time and in the manner prescribed by the procurement officer.~~
- ~~C. In an emergency, cost or pricing data may be submitted at a reasonable time after the contract is awarded.~~
- ~~D. The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.~~

~~E. Pursuant to A.R.S. § 41-2543(C), the State Procurement Administrator may waive the requirement that cost or pricing data be submitted if such officer determines in writing that the waiver is advantageous to the state.~~

~~F. A copy of all determinations by the procurement officer or the State Procurement Administrator that pertain to the submission of cost or pricing data shall be maintained in the contract file.~~

#### **R2-7-358. Certification of Current Cost or Pricing Data Repealed**

~~A. As soon as practicable after agreement is reached on an original or adjusted contract price, the offeror or contractor shall certify in a form approved by the Director that the cost or pricing data submitted in support of a proposal pursuant to R2-7-357 is accurate, complete, and current as of a mutually determined date.~~

~~B. The procurement officer may waive the requirement that cost or pricing data be certified if he determines in writing that adequate price competition exists after examining cost or pricing data that is submitted in support of a proposal.~~

~~C. Additional certification or submission of additional data is not required if an option exercised subsequent to initial negotiation is based upon previously certified cost or pricing data.~~

~~D. The solicitation shall include a notice that certified cost or pricing data must be submitted.~~

#### **R2-7-359. Refusal to Submit Cost or Pricing Data Repealed**

~~A. If the offeror fails to submit cost or pricing data in the required form, the procurement officer may reject the offer.~~

~~B. If a contractor fails to submit data to support a price adjustment in the form required, the procurement officer may:~~

- ~~1. Reject the price adjustment;~~
- ~~2. Set the amount of the price adjustment subject to the contractor's rights under Article 9 of the Arizona Procurement Code.~~

#### **R2-7-360. Defective Cost or Pricing Data Repealed**

~~A. The procurement officer may reduce the contract price if, upon a written determination, the cost or pricing data is defective.~~

~~B. The contract price shall be reduced in the amount of the defect plus related overhead and profit or fee if the procurement officer relied upon the defective data in awarding the contract.~~

~~C. Any dispute as to the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data may be appealed as a contract controversy under Article 9. Notwithstanding an appeal, the contract price shall be adjusted.~~

~~D. If certification of current cost or pricing data is required, the awarded contract shall include notice of the right of the state to a reduction in price if certified cost or pricing data is subsequently determined to be defective.~~

**R2-7-361. Price or Cost Analysis Repealed**

~~The procurement officer shall conduct a price or cost analysis if submission of price or cost data is required.~~

**R2-7-362. Authority to Use Contract Types Repealed**

~~A. The following contract types may be used by the procurement officer without obtaining a prior approval by the State Procurement Administrator:~~

- ~~1. Fixed price contract, except fixed price cost incentive contract;~~
- ~~2. Lease; and~~
- ~~3. Lease with purchase option.~~

~~B. Any other type of contract may be used only if the State Procurement Administrator determines in writing prior to solicitation that the use of the contract is permitted by law and is advantageous to the state.~~

**R2-7-363. Fixed-price Contracts Repealed**

~~A. A fixed price contract may be used if:~~

- ~~1. The extent and type of work necessary to meet state requirements can be reasonably specified; and~~
- ~~2. The cost can be reasonably estimated.~~

~~B. A firm fixed price contract may be used if prices advantageous to the state can be established at the outset of the contract.~~

~~C. Fixed price contract with price adjustment~~

- ~~1. The solicitation for a fixed price contract with price adjustment and the contract shall specify the basis for determining the price adjustment.~~
- ~~2. Notice of price adjustment shall be given by the contractor in the manner and within the time specified in the contract.~~

**R2-7-364. Lease and Lease-purchase Contracts Repealed**

~~A. A lease may be entered into only after the procurement officer determines in writing that:~~

- ~~1. A lease is advantageous to the state;~~
- ~~2. All conditions for renewal and costs of termination are set forth in the lease; and~~
- ~~3. The lease is not used to circumvent required procurement procedures.~~

~~B. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals and only after the procurement officer makes the determination required by R2-7-367(B).~~

**R2-7-365. Cost reimbursement and Cost Incentive Contracts Repealed**

~~A cost reimbursement or cost incentive type contract may be used only when the State Procurement Administrator determines in writing that the use of such contract is advantageous to the state.~~

**R2-7-366. Time and Materials Contracts and Labor Hour Contracts Repealed**

~~A. Time and materials and labor hour contracts shall, to the extent possible, contain a stated ceiling or an estimate of a contractual amount that shall not be exceeded without prior approval of the State Procurement Administrator.~~

~~B. A time and materials or labor hour contract may only be used if the State Procurement Administrator determines in writing that:~~

- ~~1. Personnel have been assigned to closely monitor the performance of the work; and~~
- ~~2. It is advantageous to the state to use such contract; and~~
- ~~3. No other contract type is practicable.~~

**R2-7-367. Option Provisions Repealed**

~~A. If the procurement officer determines that a contract is to include an option for renewal, extension, or purchase, the applicable option provisions shall be included in the solicitation.~~

~~B. Before exercising any option for renewal, extension, or purchase the procurement officer shall determine in writing that a competitive procurement is not more advantageous to the state than exercise of the particular option.~~

**R2-7-368. Approval of Accounting System Repealed**

~~Before the award of any contract except a firm fixed price contract, the procurement officer shall determine in writing that the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated and is adequate to allocate costs pursuant to Article 7.~~

**R2-7-369. Anticompetitive practices among bidders or offerors Repealed**

~~Upon submitting a bid or offer, the bidder or offeror must certify that the submission of the bid or offer did not include collusion or other anticompetitive practices.~~

**R2-7-370. Record of Procurement Actions Repealed**

~~A record of contracts in excess of \$10,000 made under A.R.S. §§ 41-2536 or 41-2537 shall be maintained pursuant to A.R.S. § 41-2551.~~

## **PART A. GENERAL PROVISIONS**

### **R2-7-A301. Source Selection Method: Determination Factors**

- A. A state governmental unit shall use any existing Arizona state contract designated as mandatory to satisfy requirements for those materials and services covered by such contracts.
- B. If a state governmental unit believes that an Arizona state contract, designated as mandatory, does not satisfy its requirements, the state governmental unit may only procure the material or service from another source with the written approval of the state procurement administrator and in conformance with the applicable source selection method.
- C. The agency chief procurement officer shall determine the applicable source selection method for a procurement, estimating the aggregate dollar amount of the contract and ensuring that the procurement is not artificially divided, fragmented, or combined to circumvent the Arizona Procurement Code.
- D. The agency chief procurement officer shall not award a contract or incur an obligation on behalf of the state unless sufficient funds are available for the procurement, consistent with A.R.S. § 35-154. If it is reasonable to believe that sufficient funds will become available for a procurement, the agency chief procurement officer may issue a notice with the solicitation indicating that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

## **PART B. COMPETITIVE SEALED BIDDING**

### **R2-7-B301. Solicitation**

- A. An agency chief procurement officer shall issue an invitation for bids at least 14 days before the offer due date and time, unless the agency chief procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the agency chief procurement officer shall document the specific reasons in the procurement file.
- B. An agency chief procurement officer shall:
  - 1. Advertise the procurement in accordance with A.R.S. §41-2533(C); and
  - 2. At a minimum, provide written notice to the prospective suppliers that have registered with the state procurement office for the specific material, service, or construction solicited.
- C. An agency chief procurement officer shall include the following in the solicitation:
  - 1. Instruction to offerors, including:

- a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;
- b. The deadline date for requesting a substitution or exception to the solicitation;
- c. The manner by which the offeror is required to acknowledge amendments;
- d. The minimum required information in the offer;
- e. The specific requirements for designating trade secrets and other proprietary information as confidential;
- f. Any specific responsibility criteria;
- g. Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;
- h. Any evaluation criteria;
- i. A statement of where documents incorporated by reference are available for inspection and copying;
- j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
- k. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;
- l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
- m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
- n. Any bid security required;
- o. The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
- p. Any designation of the specific bid items and amounts to be recorded at offer opening; and
- q. Any other offer submission requirements;
- 2. Specifications, including:
  - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
  - b. If a brand name or equal specification is used, instructions that use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state

that products substantially equivalent to the brands designated qualify for consideration; and

- c. Any other specification requirements;
- 3. Terms and Conditions, including:
  - a. Whether the contract will include an option for extension; and
  - b. Any other contract terms and conditions.

#### **R2-7-B302. Pre-offer Conferences**

An agency chief procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted, it shall be not less than seven days before the offer due date and time, unless the agency chief procurement officer makes a written determination that the specific needs of the procurement justify a shorter time. Statements made during a pre-offer conference are not amendments to the solicitation.

#### **R2-7-B303. Solicitation Amendment**

- A. An agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:
  - 1. Make changes in the solicitation;
  - 2. Correct defects or ambiguities;
  - 3. Provide additional information or instructions; or
  - 4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.
- B. If a solicitation is changed by a solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

#### **R2-7-B304. Modification or Withdrawal of Offer Before Offer Due Date and Time**

- A. An offeror may modify or withdraw its offer, in writing, before the offer due date and time.
- B. The agency chief procurement officer shall place the document submitted by the offeror in the procurement file as a record of the modification or withdrawal.

#### **R2-7-B305. Cancellation of a Solicitation Before Offer Due Date and Time**

- A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation before the offer due date and time.



- B. The agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C. The agency chief procurement officer shall not open offers after cancellation. The agency chief procurement officer may discard the offer after 30 days from notice of solicitation cancellation, unless the offeror requests the offer be returned.

**R2-7-B306. Receipt, Opening, and Recording of Offers**

- A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers publicly, in the presence of one or more witnesses, after the offer due date and time. The agency chief procurement officer shall announce the name of the offeror; the amount of each offer; and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall record the name of each offeror, and the amount of each offer. The reader and the witness shall sign the record of offers and place it in the procurement file. The agency chief procurement officer shall make the record of offers available for public viewing.
- D. Except for the information identified in subsection (C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

**R2-7-B307. Late Offers, Modifications, Withdrawals**

- A. If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation, an agency chief procurement officer shall determine the offer, modification, or withdrawal as late.
- B. The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
  - 1. The document is received before the contract award at the location designated in the solicitation; and
  - 2. The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.
- C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
  - 1. If the document is hand delivered, refuse to accept delivery; or

2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D. The agency chief procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

#### **R2-7-B308. Cancellation of Solicitation After Receipt of Offers and Before Award**

- A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation after offer due date and time. The agency chief procurement officer shall prepare a written justification for cancellation and place it in the procurement file.
- B. The agency chief procurement officer shall notify offerors of the cancellation in writing.
- C. The agency chief procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the purchasing agency intends to issue another solicitation within six months after cancellation of the procurement, the agency chief procurement officer shall withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the agency chief procurement officer shall make offers submitted in response to the cancelled solicitation available for public inspection except for information determined to be confidential pursuant to R2-7-103.
- D. In the event of cancellation, the agency chief procurement officer shall promptly return any bid security provided by an offeror.

#### **R2-7-B309. One Offer Received**

If only one offer is received in response to a solicitation, the agency chief procurement officer shall either:

1. Award the contract to the offeror and prepare a written determination that:
  - a. The price submitted is fair and reasonable under R2-7-702;
  - b. The offer is responsive; and
  - c. The offeror is responsible; or
2. Reject the offer and:
  - a. Resolicit for new offers;
  - b. Cancel the procurement; or
  - c. Use a different source selection method authorized under the Arizona Procurement Code.

#### **R2-7-B310. Offer Mistakes Discovered After Offer Opening and Before Award**

- A. If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, an agency chief procurement officer shall contact the offeror for written confirmation of the offer. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:

1. Confirm that no mistake was made and assert that the offer stands as submitted; or
2. Acknowledge that a mistake was made, and include all of the following in a written response:
  - a. Explanation of the mistake and any other relevant information;
  - b. A request for correction including the corrected offer or a request for withdrawal; and
  - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing and shall include all of the following in the written request:
  1. Explanation of the mistake and any other relevant information;
  2. A request for correction including the corrected offer or a request for withdrawal; and
  3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- C. An agency chief procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The agency chief procurement officer shall not permit a correction that is prejudicial to the state or fair competition.
- D. An agency chief procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.
- E. An agency chief procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the state.
- F. If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the agency chief procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

#### **R2-7-B311. Extension of Offer Acceptance Period**

- A. To extend the offer acceptance period, an agency chief procurement officer shall notify all offerors in writing of an extension and request written concurrence from each offeror.
- B. To be eligible for a contract award, an offeror shall submit a written concurrence to the extension. The agency chief procurement officer shall reject an offer as nonresponsive if written concurrence is not provided as requested.

#### **R2-7-B312. Bid Evaluation**

- A. An agency chief procurement officer shall evaluate offers to determine which offer provides the lowest cost to the state in accordance with any objectively measurable factors set forth in the solicitation. Examples of such factors include, but are not limited to, transportation cost, energy cost,

ownership cost, and any other identifiable cost or life cycle cost formula. The factors need not be precise predictors of actual future costs, but to the extent possible the factors shall be reasonable estimates based upon information the agency chief procurement officer has available concerning future use.

1. An agency chief procurement officer shall consider life cycle costs and application benefits when evaluating offers for the procurement of material or services identified in A.R.S. § 41-2553.
  2. An agency chief procurement officer shall consider total life cycle costs including residual value when evaluating offers for the procurement of materials or services identified in A.R.S. § 41-2554.
- B. An agency chief procurement officer shall conduct an evaluation to determine whether an offeror is responsive, based upon the requirements set forth in the solicitation. The agency chief procurement officer shall reject as nonresponsive any offer that does not meet the solicitation requirements.
- C. If there are two or more low, responsive offers from responsible offerors that are identical in price, the agency chief procurement officer shall make the award by drawing lots. If time permits, the agency chief procurement officer shall provide the offerors involved an opportunity to attend the drawing. The agency chief procurement officer shall ensure that the drawing is witnessed by at least one person other than the agency chief procurement officer.

#### **R2-7-B313. Responsibility Determinations**

- A. The agency chief procurement officer shall determine before an award whether an offeror is responsible or nonresponsive.
- B. The agency chief procurement officer shall consider the following factors before determining that an offeror is responsible or nonresponsive:
1. The offeror's financial, business, personnel, or other resources, such as subcontractors;
  2. The offeror's record of performance and integrity;
  3. Whether the offeror has been debarred or suspended;
  4. Whether the offeror is legally qualified to contract with the state;
  5. Whether the offeror promptly supplied all requested information concerning its responsibility;  
and
  6. Whether the offeror meets the responsibility criteria specified in the solicitation.
- C. If the agency chief procurement officer determines an offeror is nonresponsive, the agency chief procurement officer shall promptly send a determination to the offeror stating the basis for the determination. The agency chief procurement officer shall file a copy of the determination in the procurement file.
- D. The agency chief procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540.

- E. For the offeror awarded a contract, the agency chief procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

**R2-7-B314. Contract Award**

- A. An agency chief procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.
- B. The agency chief procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.
- C. The agency chief procurement officer shall notify all offerors of an award.
- D. After a contract is awarded, the agency chief procurement officer shall return any bid security provided by the offeror.
- E. Within 10 days after a contract is awarded, the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

**R2-7-B315. Mistakes Discovered After Award**

- A. If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information;
  2. A request for correction including the corrected offer or a request for withdrawal; and
  3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;
  2. Cancel all or part of the award; or
  3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the agency chief procurement officer may award all or part of the contract to the next lowest responsible and responsive offeror, based on the considerations of fair competition and the best interest of the state.

## **R2-7-B316. Multistep Sealed Bidding**

- A. An agency chief procurement officer shall obtain approval from the state procurement administrator before using multistep sealed bidding as a source selection method.
- B. To obtain approval for multistep sealed bidding, an agency chief procurement officer shall submit a written request to the state procurement administrator.

  - 1. The written request shall contain all of the following:

    - a. An explanation that specifications or purchase descriptions are not available or sufficiently complete to permit full competition without technical evaluations and negotiations to ensure mutual understanding between each offeror and the state;
    - b. An identification of definite criteria that exist for evaluation of technical offers;
    - c. An identification that more than one available and technically qualified source exists; and
    - d. Confirmation that a fixed-price contract will be used.
  - 2. The state procurement administrator shall:

    - a. Issue written approval, with any conditions or restrictions;
    - b. Request additional information from the agency chief procurement officer; or
    - c. Deny the request.
- C. Multi-step sealed bidding is initiated by the issuance of an invitation to submit technical offers. An agency chief procurement officer shall issue an invitation to submit technical offers that contains all of the following information:

  - 1. Notice that the procurement is conducted in two phases. In phase one unpriced technical offers are considered and selected. In phase two there is competitive bidding by offerors whose offers were selected in phase one.
  - 2. The best description of the material or service solicited;
  - 3. The requirements for each technical offer, such as drawings and descriptive literature;
  - 4. The criteria for evaluating each technical offer;
  - 5. The closing date and time for receipt of technical offers and the location where offers should be delivered or mailed; and
  - 6. A statement that negotiations may be held regarding the unpriced technical offer.
- D. An agency chief procurement officer may conduct a pre-offer conference. If a pre-offer conference is conducted, it shall be not less than seven days before the offer due date and time, unless the agency chief procurement officer makes a written determination that the specific needs of the procurement justify a shorter time period. Statements made during the pre-offer conference shall not be considered modifications to the solicitation.
- E. An agency chief procurement officer may amend an invitation to submit technical offers before or after submission of unpriced technical offers. The agency chief procurement officer shall notify all suppliers who received the solicitation of the amendment and specify a revised offer due date and

time. These suppliers may submit new offers or revise existing offers. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

- F. Unpriced technical offers shall not be opened publicly but shall be opened in the presence of two or more procurement officials. Late technical offers are not considered except under the circumstances set forth in R2-7-B307(B). The agency chief procurement officer shall not disclose the contents of an unpriced technical offer to unauthorized persons.
- G. Each unpriced technical offer shall be evaluated in accordance with the criteria in the invitation to submit technical offers to determine whether the offer is acceptable, potentially acceptable, or unacceptable. If the offer is unacceptable, the agency chief procurement officer shall issue a written determination that the offer is unacceptable, state the basis for the determination, and place the determination in the procurement file. If the agency chief procurement officer determines that an offeror's unpriced technical offer is unacceptable, the agency chief procurement officer shall notify that offeror in writing of the determination and indicate in the notice that the offeror is not afforded an opportunity to amend a technical offer.
- H. An agency chief procurement officer may conduct negotiations with any offeror that submits an acceptable or potentially acceptable technical offer. During negotiations, the agency chief procurement officer shall not disclose any information obtained from an unpriced technical offer to any other offeror. After negotiations, the agency chief procurement officer shall establish a closing date for receipt of final technical offers and provide written notice of the closing date to offerors that submitted acceptable or potentially acceptable offers. The agency chief procurement officer shall maintain a record of all negotiations.
- I. After receipt of final technical offers, an agency chief procurement officer shall determine which technical offers are acceptable for consideration in phase two. The agency chief procurement officer shall notify in writing each offeror whose technical offer was determined unacceptable.
- J. At any time during phase one, an offeror may withdraw an offer.
- K. Upon completion of phase one, an agency chief procurement officer shall issue a solicitation and conduct phase two as prescribed under R2-7-B301 through R2-7-B315 as a competitive sealed bidding procurement, except that the solicitation shall be issued only to offerors that submitted acceptable technical offers in phase one.
- L. An agency chief procurement officer shall ensure that unpriced technical offers of unsuccessful offerors are available for public inspection except to the extent that the offer is confidential under R2-7-B306.

## **PART C. COMPETITIVE SEALED PROPOSALS**

### **R2-7-C301. Solicitation**

- A. Before soliciting for offers under this Section, an agency chief procurement officer shall determine in writing that an invitation for bid is not practicable or advantageous to the state before soliciting for offers under this Section. Competitive sealed bidding may not be practicable or advantageous if it is necessary to:
1. Use a contract other than a fixed-price type;
  2. Negotiate with offerors concerning the technical and price aspects of their offers and any other aspects of their offer or the solicitation;
  3. Permit offerors to revise their offers; or
  4. Compare the different price, quality, and contractual factors of the offers submitted.
- B. The state procurement administrator may make a class determination that it is either not practicable or not advantageous to the state to procure specified types of materials or services by invitation for bid. The state procurement administrator may modify or revoke a class determination at any time.
- C. An agency chief procurement officer shall issue a request for proposal at least 14 days before the offer due date and time, unless the agency chief procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the agency chief procurement officer shall document the specific reasons in the procurement file.
- D. The agency chief procurement officer shall:
1. Advertise in accordance with A.R.S. § 41-2534(C); and
  2. At a minimum, provide written notice to prospective suppliers that have registered with the state procurement office for the specific material, service, or construction solicited.
- E. The agency chief procurement officer shall include the following in the solicitation:
1. Instructions to offerors, including:
    - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
    - b. The deadline date for requesting a substitution or exception to the solicitation;
    - c. The manner by which the offeror is required to acknowledge amendments;
    - d. The minimum information required in the offer;
    - e. The specific requirements for designating trade secrets and other proprietary information as confidential;
    - f. Any specific responsibility or susceptibility criteria;
    - g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
    - h. Evaluation factors and the relative order of importance;



- i. A statement of where documents incorporated by reference are available for inspection and copying;
  - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
  - k. Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
  - l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
  - m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
  - n. Any offer security required;
  - o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
  - p. Any cost or pricing data required;
  - q. The type of contract to be used;
  - r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award and that fall within the competitive range; and
  - s. Any other offer requirements specific to the solicitation.
2. Specifications, including:
- a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
  - b. If a brand name or equal specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
  - c. Any other specification requirements specific to the solicitation.
3. Terms and Conditions, including:
- a. Whether the contract is to include an extension option; and
  - b. Any other contract terms and conditions.

#### **R2-7-C302. Pre-offer Conferences**

An agency chief procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted, it shall be not less than seven days before the offer due date and time, unless the

agency chief procurement officer makes a written determination that the specific needs of the procurement justify a shorter time. Statements made during a pre-offer conference are not amendments to the solicitation.

#### **R2-7-C303. Solicitation Amendment**

- A. An agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:
  - 1. Make changes in the solicitation;
  - 2. Correct defects or ambiguities;
  - 3. Provide additional information or instructions; or
  - 4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.
- B. If a solicitation is changed by a written solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in a manner specified in the solicitation amendment on or before the offer due date and time.

#### **R2-7-C304. Modification or Withdrawal Of Offer Before Offer Due Date And Time**

- A. An offeror may modify or withdraw their offer at any time, in writing, before the offer due date and time.
- B. The agency chief procurement officer shall place the document submitted in the procurement file as a record of the modification or withdrawal.

#### **R2-7-C305. Cancellation of Solicitation Before Offer Due Date and Time**

- A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation before the offer due date and time.
- B. The agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C. The agency chief procurement officer shall not open offers after cancellation. The agency chief procurement officer may discard the offer after 30 days from notice of solicitation cancellation unless the offeror requests the offer be returned.

#### **R2-7-C306. Receipt, Opening, and Recording of Offers**

- A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.

- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers publicly, in the presence of one or more witnesses, after the offer due date and time. The agency chief procurement officer shall announce and record the name of each offeror and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.
- D. Except for the information identified in subsection (C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

#### **R2-7-C307. Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time**

- A. If an offer, modification, or withdrawal is not received by the offer due date and time, at the location designated in the solicitation, an agency chief procurement officer shall determine the offer, modification, or withdrawal as late. This rule does not apply to revision or withdrawal of offers as described in R2-7-C314.
- B. The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
  - 1. The document is received before contract award at the location designated in the solicitation; and
  - 2. The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.
- C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
  - 1. If the document is hand delivered, refuse to accept the delivery; or
  - 2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D. The agency chief procurement officer shall document a refusal under (C)(1) and place the document or a copy of the notice required in (C)(2) in the procurement file.

#### **R2-7-C308. Cancellation of Solicitation After Offer Opening and Before Award**

- A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation after offer due date and time. The agency chief procurement officer shall prepare a written justification for cancellation and place it in the procurement file.
- B. The agency chief procurement officer shall notify offerors of the cancellation in writing.

- C. The agency chief procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the purchasing agency intends to issue another solicitation within six months after cancellation of the procurement, the agency chief procurement officer may withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the agency chief procurement officer shall make offers submitted in response to the cancelled solicitation open for public inspection except for information determined to be confidential pursuant to R2-7-103.
- D. In the event of cancellation, the agency chief procurement officer shall promptly return any offer security provided by an offeror.

#### **R2-7-C309. Only One Offer Received**

If only one offer is received in response to a solicitation, the agency chief procurement officer shall either:

- 1. Award the contract to the offeror and prepare a written determination that:
  - a. The price submitted is fair and reasonable pursuant to R2-7-702; and
  - b. The offeror is responsible; or
- 2. Reject the offer and:
  - a. Resolicit for new offers;
  - b. Cancel the procurement; or
  - c. Use a different source selection method authorized under the Arizona Procurement Code.

#### **R2-7-C310. Extension of Offer Acceptance Period**

- A. To extend the offer acceptance period, an agency chief procurement officer shall notify offerors in writing of an extension and request written concurrence from all offerors.
- B. To be eligible for a contract award, an offeror shall submit written concurrence to the extension. The agency chief procurement officer shall not consider the offer from an offeror who fails to respond to the notice of extension.

#### **R2-7-C311. Determination of Not Susceptible for Award**

- A. An agency chief procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award. The agency chief procurement officer shall place a written determination, based on one or more of the following, in the procurement file:
  - 1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
  - 2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or
  - 3. The offer is not within the competitive range in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is in the competitive range, the offer should be included.

- B. The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors.

**R2-7-C312. Responsibility Determinations**

- A. An agency chief procurement officer shall determine, at any time during the evaluation period and before award, that an offeror is responsible or nonresponsible.
- B. The agency chief procurement officer may consider the following factors before determining that an offeror is responsible or nonresponsible:
1. The offeror's financial, business, personnel, or other resources, including subcontractors;
  2. The offeror's record of performance and integrity;
  3. Whether the offeror has been debarred or suspended;
  4. Whether the offeror is legally qualified to contract with the state;
  5. Whether the offeror promptly supplied all requested information concerning its responsibility;  
and
  6. Whether the offeror meets any responsibility criteria specified in the solicitation.
- C. The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is noresponsible unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors. The agency chief procurement office shall file a copy of the determination in the procurement file.
- D. The agency chief procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540(B).
- E. For the offeror awarded a contract, the agency chief procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

**R2-7-C313. Clarification of Offers**

- A. The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the request for proposal or offer shall not be made by clarification.
- B. The agency chief procurement officer may request clarifications from offerors at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award.
- C. The agency chief procurement officer shall retain any clarifications in the procurement file.

#### **R2-7-C314. Negotiations with Responsible Offerors and Revisions of Offers**

- A. An agency chief procurement officer shall establish procedures and schedules for conducting negotiations. The agency chief procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.
- B. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the offeror shall confirm the negotiations in writing.
- C. If negotiations are conducted, negotiations shall be conducted with all offerors determined to be in the competitive range or reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.
- D. An agency chief procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the state based on the requirements and the evaluation factors set forth in the solicitation.
- E. Responsible offerors determined to be susceptible for award, with which negotiations have been held, may revise their offer in writing during negotiations.
- F. An offeror may withdraw an offer at any time before the final proposal revision due date and time by submitting a written request to the agency chief procurement officer.

#### **R2-7-C315. Final Proposal Revisions**

- A. An agency chief procurement officer shall request written final proposal revisions from any offeror with whom negotiations have been conducted, unless the offeror has been determined not susceptible for award under R2-7-C311 or non-responsible under R2-7-C312. The agency chief procurement officer shall include in the written request:
  - 1. The date, time, and place for submission of final proposal revisions; and
  - 2. A statement that if offerors do not submit a written notice of withdrawal or a written final proposal revision, their immediate previous written proposal revision will be accepted as their final proposal revision.
- B. The agency chief procurement officer shall request written final proposal revisions only once, unless the state procurement administrator makes a written determination that it is advantageous to the state to conduct further negotiations or change the state's requirements.
- C. If an apparent mistake, relevant to the award determination, is discovered after opening of final proposal revisions, the agency chief procurement officer shall contact the offeror for written confirmation. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
  - 1. Confirm that no mistake was made and assert that the offer stands as submitted; or
  - 2. Acknowledge that a mistake was made, and include the following in a written response:
    - a. Explanation of the mistake and any other relevant information;
    - b. A request for correction including the corrected offer or a request for withdrawal; and

- c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- D. An offeror who discovers a mistake in their final proposal revision may request withdrawal or correction in writing, and shall include the following in the written request:
  - 1. Explanation of the mistake and any other relevant information;
  - 2. A request for correction including the corrected offer or a request for withdrawal; and
  - 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- E. In response to a request made under subsections (C) or (D), the agency chief procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the state. If an offeror does not provide written confirmation of the final proposal revision, the agency chief procurement officer shall make a written determination that the most recent written proposal revision submitted is the final proposal revision.

#### **R2-7-C316. Evaluation of Offers**

- A. An agency chief procurement officer shall evaluate offers and final proposal revisions based on the evaluation criteria contained in the request for proposals. The agency chief procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.
- B. An agency chief procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the agency chief procurement officer. The agency chief procurement officer may:
  - 1. Accept or reject the findings of the evaluation committee;
  - 2. Request additional information from the evaluation committee; or
  - 3. Replace the evaluation committee.
- C. The agency chief procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

#### **R2-7-C317. Contract Award**

- A. An agency chief procurement officer shall award the contract to the responsible offeror whose offer is determined to be most advantageous to the state based on the evaluation factors set forth in the solicitation. The agency chief procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.

- B. Before awarding any cost reimbursement contract, the agency chief procurement officer shall determine in writing that:
  - 1. The offeror's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated, and
  - 2. It is adequate to allocate costs pursuant to Article 7.
- C. The agency chief procurement officer shall notify all offerors of an award.
- D. After contract award, the agency chief procurement officer shall return any offer security provided by the offeror.
- E. Within 10 days after contract award the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

#### **R2-7-C318. Mistakes Discovered After Award**

- A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in their written request:
  - 1. Explanation of the mistake and any other relevant information;
  - 2. A request for correction including the corrected offer or a request for withdrawal; and
  - 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
  - 1. Allow correction of the mistake;
  - 2. Cancel all or part of the award; or
  - 3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the agency chief procurement officer may award all or part of the contract to the next responsible offeror whose offer is determined to be the next most advantageous to the state according to the evaluation factors contained in the solicitation.

### **PART D. PROCUREMENTS NOT EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535**

#### **R2-7-D301. Applicability**

For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, including construction, the agency chief procurement officer shall issue a request for quotation under R2-7-D303 unless any of the following apply:

- 1. The purchase can be made from a state or agency contract;



2. The purchase can be made from a set-aside organization as established in Article 10;
3. The purchase is not expected to exceed \$5,000.00;
4. The purchase is made as a sole-source procurement under A.R.S. §41-2536;
5. The agency chief procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances;

#### **R2-7-D302. Solicitation – Request for Quotation**

- A. A request for quotation shall be issued for purchases estimated to exceed \$5,000 but less than that specified in A.R.S. § 41-2535. The agency chief procurement officer shall include the following in the solicitation:
1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;
  2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
  3. The minimum information that the offer shall contain;
  4. Any evaluation factors;
  5. Whether negotiations may be held;
  6. Any contract options including renewal or extension;
  7. The uniform terms and conditions by text or reference; and
  8. Any other terms, conditions, or instructions specific to the procurement.
- B. The request for quotation shall include a statement that only a small business, as defined in R2-7-101, shall be awarded a contract, unless any of the following apply:
1. The purchase has been unsuccessfully competed under R2-7-D303, including failure to obtain fair and reasonable prices; or
  2. The agency chief procurement officer has made a written determination that restricting the procurement to small business is not practical under the circumstances.

#### **R2-7-D303. Request for Quotation Issuance**

The agency chief procurement officer shall issue the request for quotation by one of these methods:

1. Post the request for quotation on the state procurement office's centralized electronic system indicating the date which offers are due. The request for quotation shall be posted for a reasonable time as determined by the agency chief procurement officer based on the needs of the purchasing agency.
2. Distribute the request for quotation to a minimum of three small businesses. The agency chief procurement officer shall rotate suppliers invited to submit quotations and shall invite at least one small minority- or small women-owned business enterprise to submit a quote. If the agency chief

procurement officer is unable to locate a small minority- or small women-owned business enterprise, the agency chief procurement officer shall document in the procurement file.

3. The agency chief procurement officer may cancel the request for quotation at any time by making a written determination that cancellation is advantageous to the state.

#### **R2-7-D304. Contract Award**

- A. If only one responsive offer is received, the agency chief procurement officer shall explain in writing whether award of the contract is advantageous to the state and place the determination in the procurement file.
- B. The agency chief procurement officer shall award a contract to the small business determined to be most advantageous to the state in accordance with any evaluation factors identified in the request for quotation. If award is pursuant to R2-7-D302(B)(1) or R2-7-D302(B)(2), the agency chief procurement officer shall award a contract to the offeror determined to be most advantageous to the state in accordance with any evaluation factors identified in the request for quotation.
- C. The agency chief procurement officer shall place the written basis for the award in the procurement file.
- D. The agency chief procurement officer shall make the procurement file available to the public on the date of contract award, except for those items considered confidential under R2-7-103.

#### **R2-7-D305. Purchases of \$5000 and Less**

The agency chief procurement officer shall use reasonable judgment in awarding contracts of \$5,000 and less that are advantageous to the state. The agency chief procurement officer may but is not required to request quotations.

### **PART E. LIMITED COMPETITION FOR PROCUREMENTS EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535**

#### **R2-7-E301. Sole Source Procurements**

- A. For the purposes of this Section, the term “sole-source procurement” means a material or service procured without competition when:
  1. There is only a single source for the material or service; or
  2. No reasonable alternative source exists.
- B. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202. If not delegated to the agency chief procurement officer, the agency chief procurement officer shall submit a written request for approval to procure from a sole source to the state procurement administrator before proceeding. The request shall include the following information:

1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists;
  2. The name of the proposed supplier;
  3. The duration and estimated total dollar value of the proposed procurement;
  4. Documentation that the price submitted is fair and reasonable pursuant to R2-7-702; and
  5. A description of efforts made to seek other sources.
- C. The state procurement administrator shall post the request on the state procurement office website and invite comments on the sole-source request for five working days. Following this period, the state procurement administrator shall either:
1. Issue written approval, with any conditions or restrictions;
  2. Request additional information from the agency chief procurement officer; or
  3. Deny the request if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.
- D. If the sole-source procurement is authorized or approved, the agency chief procurement officer shall negotiate a contract advantageous to the state.
- E. The agency chief procurement officer shall keep a record of all sole-source procurements pursuant to A.R.S. § 41-2551.

#### **R2-7-E302. Emergency Procurements**

- A. For the purposes of Section, the term “emergency” means any condition creating an immediate and serious need for materials, services, or construction in which the state’s best interests are not met through the use of other source-selection methods. The condition must seriously threaten the functioning of state government, the preservation or protection of property, or the health or safety of a person.
- B. This Section applies to only emergency procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535. The agency chief procurement officer may procure a material or service without competition when there is an emergency by complying with this Section.
- C. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202. If not delegated to the agency chief procurement officer, the agency chief procurement officer shall submit the written request for, or notification of, the emergency procurement to the state procurement administrator. The request shall include the following information:
1. A description of the procurement need and the reason for the emergency;
  2. The name of the supplier;
  3. The duration and estimated total dollar value of the procurement; and
  4. Documentation that the price submitted is fair and reasonable pursuant to R2-7-702.

- D. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with an emergency procurement. The state procurement administrator shall either:
1. Issue written approval, with any conditions or restrictions;
  2. Request additional information from the agency chief procurement officer; or
  3. Deny the request.
- E. An employee acting within the authority of a using agency may proceed with an emergency procurement without approval from the state procurement administrator if the emergency necessitates immediate response and it is impracticable to contact the state procurement administrator. The agency chief procurement officer shall submit a written confirmation of the emergency procurement to the state procurement administrator within five working days of the emergency.
- F. A using agency making an emergency procurement shall limit the procurement to such actions necessary to address the emergency.
- G. A using agency making an emergency procurement shall employ maximum competition, given the circumstances, to protect the interests of the state.
- H. The agency chief procurement officer shall keep a record of all emergency procurements pursuant to A.R.S. § 41-2551.

**R2-7-E303. Competition Impracticable Procurements**

- A. For the purposes of this Section, “competition impracticable” means a procurement requirement exists which makes compliance with A.R.S. §§ 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R2-7-E302.
- B. An agency chief procurement officer seeking a competition impracticable procurement shall obtain the approval of the state procurement administrator before proceeding. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202.
- C. The agency chief procurement officer shall submit a written request for approval containing the following:
1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. §§ 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest;
  2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
  3. An explanation of why the proposed procurement process is advantageous to the state; and
  4. The scope, duration, and estimated total dollar value of the procurement need.
- D. The state procurement administrator shall:

1. Issue written approval, with any conditions or restrictions;
  2. Request additional information from the agency chief procurement officer; or
  3. Deny the request.
- E. Before modifying the scope, duration, or cost of an approved competition impracticable procurement, the agency chief procurement officer shall request approval for the modifications in writing from the state procurement administrator.
- F. The agency chief procurement officer shall keep a record of all competition impracticable procurements as required by A.R.S. § 41-2551.

**PART F. COMPETITIVE SELECTION PROCESS FOR SERVICES OF CLERGY, PHYSICIANS, DENTISTS, LEGAL COUNSEL, OR CERTIFIED PUBLIC ACCOUNTANTS**

**R2-7-F301. Statement of Qualifications**

- A. The procurement officer may request that persons desiring to provide the services specified in A.R.S. § 41-2513 submit statements of qualifications on a prescribed form which shall include, but not be limited to the following information:
1. Technical education and training;
  2. General or special experience, certifications, licenses, and memberships in professional associations, societies, or boards; and
  3. Any other relevant information requested by the purchasing agency.
- B. Persons who have submitted statement of qualifications may submit additional information or change information that was previously submitted at any time.
- C. The procurement officer may, in lieu of Subsection (A), incorporate the statement of qualifications as part of the solicitation pursuant to R2-7-F302.

**R2-7-F302. Solicitation**

- A. For procurements not exceeding the amount prescribed in A.R.S. § 41-2535, except as authorized under A.R.S. § 41-2536, the procurement officer shall comply with Part D of this Article.
- B. For procurements exceeding the amount prescribed in A.R.S. § 41-2535, the procurement officer shall follow the procedures below, except as authorized under A.R.S. §§ 41-2536 or 41-2537:
1. The procurement officer shall issue a request for proposal providing adequate notice based on the circumstances.
  2. The procurement officer shall provide notice to prospective suppliers registered at the state procurement office for the specific service and, if R2-7-F301 has been implemented, to persons who have submitted statements of qualifications for the particular services solicited, or both.
  3. The procurement officer shall include the following in the solicitation:

- a. A specific offer due date and time, or that offers will be accepted on an open and continuous basis. If offers are accepted on an open and continuous basis, the designated, continuous day and time in which offers will be opened;
- b. The location where offers will be received;
- c. The offer acceptance period;
- d. The manner by which the offeror is required to acknowledge amendments;
- e. A description of the services needed;
- f. The type of qualifications, experience, licensing, or other information required;
- g. The minimum information in the offer;
- h. Any evaluation criteria;
- i. Any applicable contract terms and conditions;
- j. A statement that negotiations may be conducted to determine the offeror's qualifications for further consideration;
- k. Any cost or pricing data required;
- l. The type of contract to be used;
- m. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
- n. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices; and
- o. A statement of whether the services shall be retained for a stated or on-going period of time and whether the contract is to include any option for renewal or extension.

#### **R2-7-F303. Solicitation Amendment**

- A. A procurement officer shall issue a solicitation amendment to do any or all of the following:
  - 1. Make changes in the solicitation;
  - 2. Correct defects or ambiguities;
  - 3. Provide additional information or instructions; or
  - 4. Extend the offer due date and time if the procurement officer determines that an extension is in the best interest of the state.
- B. If a solicitation is changed by a written solicitation amendment, the procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.
- C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in a manner specified in the solicitation amendment on or before the offer due date and time.

**R2-7-F304. Cancellation of Solicitation**

- A. Based on the best interest of the state, the procurement officer may cancel a solicitation at any time before award.
- B. Based on the best interest of the state, the procurement officer may cancel an open and continuous solicitation at any time during the active period of the solicitation. Contracts that have already been awarded in accordance with the solicitation shall not be affected by the cancellation.
- C. The procurement officer shall notify offerors of the cancellation in writing.
- D. The procurement officer shall return any offers received to the offerors.

**R2-7-F305. Receipt, Opening, and Recording of Offers**

- A. A procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The procurement officer shall secure the offer and retain it for public opening.
- C. The procurement officer shall open offers publicly, in the presence of one or more witnesses, after the offer due date and time. The procurement officer shall announce and record the name of each offeror and any other relevant information as determined by the procurement officer. The reader and the witness shall sign the record of offers and place it in the procurement file. The procurement officer shall make the record of offers available for public viewing.
- D. Except for the information identified in R2-7-C306(C), the procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

**R2-7-F306. Timely and Late Modifications or Withdrawals of Offer**

- A. An authorized representative of an offeror may withdraw an offer in writing if the written request for withdrawal is received by the procurement officer before the designated offer due date and time or the designated, continuous offer due day and time.
- B. An offeror may withdraw or modify an offer at any time before the due date and time or designated, continuous day and time for offer opening and before contract award by submitting a written request to the procurement officer.
- C. If a modification or a withdrawal is not received by the designated offer due date and time or the designated, continuous day and time for offer opening, the procurement officer shall determine the modification or withdrawal as late. The procurement officer shall reject a late modification or withdrawal unless:

1. The document is received before the contract award; and
  2. The document would have been received by the designated offer due date and time or the designated, continuous day and time for offer opening but for the action or inaction of state personnel directly serving the purchasing agency.
- D. Upon receiving a late modification or withdrawal, the procurement officer shall:
1. If the document is hand delivered, refuse to accept delivery; or
  2. If the document is not hand delivered, record the time and date of receipt, and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- E. The procurement officer shall document a refusal under (D)(1) and place this document or a copy of the notice required in (D)(2) in the procurement file.

#### **R2-7-F307. Late Offers**

- A. If a specific offer due date and time has been identified in the solicitation, the procurement officer shall reject any offer received after the specified offer due date and time.
1. The procurement officer shall accept a late offer if the document is received before contract award or it would have been received by the offer due date and time but for the action or inaction of state personnel directly serving the purchasing agency.
  2. Upon receiving a late offer, the procurement officer shall:
    - a. If the document is hand delivered, refuse to accept the delivery; or
    - b. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
  3. The procurement officer shall document a late offer in the procurement file.
- B. If the solicitation has a designated, continuous day and time for offer opening and an offer is received after the day and time for offer opening, the procurement officer shall accept and log in the offer for the next scheduled day and time for offer opening.

#### **R2-7-F308. Negotiations with Offerors**

- A. The procurement officer may conduct negotiations with any or none of the offerors.
- B. The procurement officer may conduct negotiations to improve offers in such areas as cost, price, specifications, performance, or terms, and to achieve best value for the state.
- C. The procurement officer shall document the results of negotiations in writing. Final proposal revisions are not required, but may be used at the discretion of the procurement officer.



- D. The procurement officer shall ensure that negotiations do not disclose any information derived from other offers.

**R2-7-F309. Contract Award**

- A. The procurement officer shall award the contract to the offeror best qualified based on the evaluation factors set forth in the request for proposal and after making a written determination that the price is fair and reasonable. The procurement officer shall not award a contract based solely on price.
- B. The procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.
- C. The procurement officer shall award contracts pursuant to A.R.S. § 41-2513(B) through (D) where applicable.
- D. Within 10 days after contract award the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

**R2-7-F310. Mistakes Discovered After Award**

- A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information;
  2. A request for correction including the corrected offer or a request for withdrawal; and
  3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. Based on the considerations of fair competition and the best interest of the state, the procurement officer may:
1. Allow correction of the mistake;
  2. Cancel all or part of the award; or
  3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next responsible offeror whose offer is determined to be the next most advantageous to the state according to the evaluation factors contained in the solicitation.

## **PART G. OTHER SOURCE SELECTION**

### **R2-7-G301. Request for Information**

An agency chief procurement officer may issue a request for information to obtain price, delivery, technical information or capabilities for planning purposes.

1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
2. To the extent allowed by law, information contained in a response to a request for information may be considered confidential until the procurement process is concluded or two years, whichever occurs first.
3. There is no required format to be used for requests for information.

### **R2-7-G302. Demonstration Projects**

- A. An agency chief procurement officer shall submit a written request to the state procurement administrator to award a contract for a demonstration project. The written request shall contain the following:
1. Name of the agency or agencies;
  2. Name of the contractor;
  3. Description of the project, including unique and innovative features of the project;
  4. Statement and explanation that the project is in best interest of the state;
  5. Duration of the project; and
  6. Proposed contract terms and conditions.
- B. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with a demonstration project. The state procurement administrator shall either:
1. Issue written approval, with any conditions or restrictions;
  2. Request additional information from the agency chief procurement officer; or
  3. Deny the request.
- C. Demonstration projects shall be provided by the contractor at no cost and the State shall not be obligated to purchase or lease the services or materials from the contractor.
- D. The agency chief procurement officer may submit a written request to the state procurement administrator to purchase or lease from the demonstration contractor. The written request shall be submitted within 12 months after the demonstration project begins or within 12 months after the demonstration project ends and contain the following:
1. Name of the agency or agencies;
  2. Name of the contractor;
  3. Description of the project, including unique and innovative features of the project;
  4. Statement and explanation that lease or purchase is in best interest of the state;
  5. Cost to the state;

6. Duration of the proposed contract; and
7. Proposed contract terms and conditions.
- E. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with purchasing or leasing from the demonstration contractor. The state procurement administrator shall:
  1. Issue written approval, with any conditions or restrictions;
  2. Request additional information from the agency chief procurement officer; or
  3. Deny the request.
- F. The term of the contract resulting from a demonstration project shall not exceed two years.

#### **R2-7-G303. Unsolicited Proposals**

- A. An unsolicited proposal shall be a proposal that is submitted at the initiative of the offeror, and not in response to a solicitation.
- B. An unsolicited proposal shall be submitted in writing and in sufficient detail for the agency chief procurement officer to understand the proposal.
- C. An unsolicited proposal shall not be an advance offer to a known state requirement.
- D. An agency chief procurement officer shall submit a written request to the state procurement administrator to award a contract resulting from an unsolicited proposal. The written request shall contain the following:
  1. Name of the agency or agencies;
  2. Name of the contractor;
  3. Description of the project, including unique and innovative features of the project;
  4. Statement and explanation that project is in best interest of the state;
  5. Duration of the project; and
  6. Proposed contract terms and conditions.
- E. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with an unsolicited proposal. The state procurement administrator shall:
  1. Issue written approval, with any conditions or restrictions;
  2. Request additional information from the agency chief procurement officer; or
  3. Deny the request.

#### **R2-7-G304. General Services Administration Contracts**

- A. An agency chief procurement officer may purchase products or services using General Services Administration (GSA) schedules or contracts under the following conditions:
  1. Use of the GSA contract or schedule is cost effective and in the best interest of the state;
  2. Price is equal to or less than the contractor's current GSA price;
  3. Price is fair and reasonable;

4. Contractor is willing to offer GSA pricing and terms to the state;
  5. Comparable products or services are not available under a state or agency contract;
  6. Comparable products or services are not restricted under a set-aside contract; and
  7. Contractor accepts required state contract terms and conditions.
- B. An agency chief procurement officer shall make a written determination that use of the GSA contract or schedule is in the best interest of the state. The determination shall contain the following:
1. Name of the contractor;
  2. GSA contract or schedule number;
  3. Procurement description;
  4. Analysis of price, quality, and other relevant factors; and
  5. Statement that the price is fair and reasonable.

#### **R2-7-G305. Public-Private Partnership Contracts**

- A. As referenced in this Article, a public-private partnership contract is a government contract and not a partnership. The government shall not jointly own or share property with the contractor and the government shall not be responsible for the contractor's liabilities.
- B. An agency chief procurement officer shall submit a written request to the state procurement administrator to enter into a public-private partnership contract. The written request shall contain the following:
1. Name of the agency or agencies;
  2. Name of the contractor;
  3. Description of the public-private partnership, including obligations of the agency and the contractor;
  4. Statement and explanation that the project is in best interest of the state;
  5. Proposed contract price and assessment of the proposed value;
  6. Description of the proposed performance measurement criteria and methods;
  7. Duration of the project; and
  8. Proposed contract terms and conditions.
- C. The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with a public-private partnership. The state procurement administrator shall either:
1. Issue written approval, with any conditions or restrictions;
  2. Request additional information from the agency chief procurement officer; or
  3. Deny the request.
- D. If the request is approved, the contract shall be awarded in accordance with A.R.S. §§ 41-2533, 41-2534, 41-2535, 41-2536, or 41-2537.

- E. The using agency is responsible for obtaining all necessary approvals, including approvals from the Government Information Technology Agency and Joint Legislative Budget Committee, before entering into a public-private partnership contract.

## **ARTICLE 4. SPECIFICATIONS**

### **R2-7-401. ~~Definitions~~ Preparation of Specifications**

~~In this Article, unless the context otherwise requires:~~

- ~~1. "Brand name or equal specification" means a specification that uses one or more manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and that provides for the submission of equivalent products.~~
  - ~~2. "Brand name specification" means a specification limited to one or more items by manufacturers' names or catalogue numbers.~~
  - ~~3. "Proprietary specification" means a specification that describes a material made and marketed by a person having the exclusive right to manufacture and sell such material and excludes other material with similar quality, performance or functional characteristics from being responsive to the solicitation.~~
  - ~~4. "Qualified products list" means an approved list of materials described by model or catalogue numbers that, prior to competitive solicitation, the state has determined will meet the applicable specification requirements.~~
  - ~~5. "Specification for a common or general use item" means a specification that has been developed and approved for repeated use in procurements pursuant to R2-7-404(A).~~
  - ~~6. "Standard commercial material" means material that, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor or dealer for the marketing of such material.~~
- A. State governmental units may prepare and utilize specifications only under the authority delegated by the state procurement administrator under R2-7-202.
- B. An agency chief procurement officer delegated the authority to prepare and utilize specifications shall comply with the requirements of A.R.S. §41-2561 through A.R.S. §41-2568 and ensure specifications used support maximum practical competition.
- C. The agency chief procurement officer may contract for the preparation of specifications with persons other than state personnel.
- D. Notwithstanding the provisions of this section, the state procurement administrator retains the authority to prepare, issue, revise, and monitor all specifications and plans.
- E. If a mandatory specification has been designated by the state procurement administrator for a particular material, service, or construction item, it shall be used unless the state procurement

administrator makes a written determination that its use is not advantageous to the state and that another specification may be used.

#### **R2-7-402. ~~Preparation~~ Utilization of Specifications**

~~A. Specifications shall be prepared by the Director, or by using agencies pursuant to R2-7-408 or by contract pursuant to R2-7-410.~~

~~B. In an emergency under A.R.S. § 41-2537, any necessary specifications may be utilized by the Purchasing or using agency without regard to the provisions of this Chapter.~~

The agency chief procurement officer may use any type of specification that describes the procurement requirement and promotes competition, except that the agency chief procurement officer shall not use proprietary or restrictive specifications without the prior written approval of the state procurement administrator.

#### **R2-7-403. ~~Content~~ Determination for Use of Brand Name Type Specifications**

~~A. A specification may provide alternate descriptions of materials, services, or construction items where two or more design, functional, or performance criteria will satisfactorily meet the state's requirements.~~

~~B. To the extent practicable, a specification shall not include any solicitation term or condition or any contract term or condition.~~

~~C. If a specification for a common or general use item has been developed in accordance with R2-7-404(A) or a qualified products list has been developed in accordance with R2-7-404(D) for a particular material, service, or construction item, it shall be used unless the State Procurement Administrator makes a written determination that its use is not advantageous to the state and that another specification shall be used.~~

~~D. To the extent practicable, specifications shall emphasize functional or performance criteria. To facilitate the use of such criteria, using agencies shall use reasonable efforts to include the principal functional or performance requirements as a part of their purchase requisitions.~~

A. The state procurement administrator may authorize the use of a brand name only specification if the state procurement administrator makes a written determination that only the identified brand name item will satisfy the state's needs.

B. The agency chief procurement officer shall, to the extent practicable, identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve the maximum practical competition.

C. The agency chief procurement officer may use a brand name or equal specification when the agency chief procurement officer determines this type of specification is in the best interest of the state.

#### **R2-7-404. Types of Specifications Repealed**

~~A. Specifications for common or general use items. To the extent practicable, a specification for common or general use item shall be prepared and utilized when:~~

- ~~1. A material, service or construction item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the material, service, or construction item, as commercially produced or provided, remain relatively stable while the frequency or volume of procurements is significant;~~
- ~~2. The state's recurring needs require uniquely designed or specially produced items; or~~
- ~~3. The State Purchasing Administrator or using agency authorized to prepare such specifications finds it to be advantageous to the state.~~

~~B. Brand name or equal specification~~

- ~~1. A brand name or equal specification may be used when the procurement officer determines in writing that use of a brand name or equal specification is advantageous to the state and that:
  - ~~a. No specification for a common or general use item or qualified products list is available;~~
  - ~~b. Time does not permit the preparation of another form of specification, other than a brand name specification; or~~
  - ~~c. The nature of the product or the state's requirements makes use of a brand name or equal specification suitable for the procurement.~~~~
- ~~2. Such determination may be made for categories of materials, services, or construction items or, in appropriate circumstances, for an entire procurement action even though a number of different items are being procured.~~
- ~~3. A brand name or equal specification shall designate as many different brands as are practicable as "or equal" references.~~
- ~~4. A brand name or equal specification shall include a description of the particular design, functional, or performance characteristics that are required unless the procurement officer authorized to approve specifications determines that the essential characteristics of the brand names designated in the specifications are commonly known.~~
- ~~5. A solicitation that uses a brand name or equal specification shall explain that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration.~~

~~C. Brand name specification~~

- ~~1. A brand name specification may be prepared and utilized only if the State Procurement Administrator makes a written determination that only the identified brand name item will satisfy the state's needs.~~
- ~~2. If a brand name specification is utilized the procurement officer shall, to the extent practicable, identify sources from which the designated brand name item can be obtained and shall solicit such~~

~~sources to achieve the maximum practicable competition. If only one source can supply the requirement, the procurement shall be made under A.R.S. § 41-2536.~~

**D. Qualified products list.**

- ~~1. A qualified products list may be prepared and utilized when the procurement officer authorized to develop qualified products lists determines that testing or examination of the materials or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy state requirements.~~
- ~~2. The procurement officer shall solicit as many potential suppliers as practicable to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration in accordance with the schedule or procedure established for this purpose. The qualified products list shall not be modified after the solicitation is issued.~~
- ~~3. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with requirements published by the State Procurement Office.~~
- ~~4. Qualified products lists' test results shall protect the identity of the suppliers.~~

**R2-7-405. Confidentiality Repealed**

- ~~A. Specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection, except to the extent that the withholding of such information is permitted or required by law.~~
- ~~B. If the supplier believes that information it has provided to the procurement officer contains trade secrets or proprietary data that should be kept confidential, a statement advising the procurement officer of this fact must accompany the specification in accordance with R2-7-104.~~

**R2-7-406. Reserved Repealed**

**R2-7-407. Using Agency Advice and Assistance Repealed**

~~The using agency shall submit advice and assistance in the development of specifications or plans pursuant to a request from the Director.~~

**R2-7-408. Preparation and Utilization of Specifications and Plans by Using Agencies Repealed**

- ~~A. The Director may delegate the authority to prepare and utilize specifications or plans to using agencies pursuant to R2-7-201.~~
- ~~B. Using agencies delegated the authority to prepare and utilize specifications or plans shall comply with the requirements of Article 4.~~
- ~~C. Notwithstanding the provisions of this rule or R2-7-410, the Director retains the authority to approve or disapprove all specifications and plans.~~



**R2-7-409. Requirements of Nonrestrictiveness Repealed**

**A. Nonexclusive specifications**

1. ~~Unless otherwise permitted by this Chapter, all specifications shall describe the state's requirements in a manner that does not unnecessarily exclude a material, service, or construction item.~~
2. ~~Proprietary specifications shall not be used unless the State Procurement Administrator determines in writing that such specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of proprietary specifications.~~

**B. ~~To the extent practicable, the state shall use accepted commercial specifications and shall procure standard commercial materials.~~**

**R2-7-410. Preparation of Specifications or Plans by Persons Other Than State Personnel Repealed**

**A. ~~The Director may contract for the preparation of specifications or plans for public contracts by persons other than state personnel including but not limited to architects, engineers, designers, and other draftsmen.~~**

**B. ~~The requirements of this Article shall apply to all specifications or plans prepared by persons other than state personnel pursuant to subsection (A) of this rule. Contracts for the preparation of specifications or plans by persons other than state personnel shall require them to adhere to such requirements.~~**

**R2-7-411. Conflict of Interest Repealed**

**A. ~~No person preparing or assisting in the preparation of specifications, plans or scopes of work shall receive any direct benefit from the utilization of those specifications, plans or scopes of work.~~**

**B. ~~A procurement officer may waive the restriction set forth in subsection (A) of this rule if the procurement officer determines in writing that its application would not be in the state's best interest. The procurement officer shall use as guidance in making that determination the organizational conflicts of interest regulations set forth in the Code of Federal Regulations, 48 CFR Chapter 1, Subpart 9.5 (October 1, 1991), excluding later amendments or editions, incorporated by reference herein and on file with the Secretary of State. The determination shall state the specific reasons that the restriction in subsection (A) of this rule has been waived.~~**

**ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIED PROFESSIONAL SERVICES**

**R2-7-501. Definitions Procurement of Specified Professional and Construction Services**

In this Article, unless the context otherwise requires:

1. ~~"Force account" means work performed by the state's regularly employed personnel.~~
  2. ~~"Specified professional services" means services of architect, engineer, land surveying, assayer, geologist and landscape architect.~~
- A. The agency chief procurement officer shall procure specified professional services as defined in A.R.S. § 41-2578(A) in the following manner:
1. Through existing state contracts if available;
  2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2578 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;
  3. In accordance with A.R.S. § 41-2578 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2578(C)(2); or
  4. May procure services in accordance with A.R.S. §§ 41-2536, 41-2537, or 41-2578(C)(2).
- B. Unless an alternate project delivery method is used as permitted under R2-7-503, the agency chief procurement officer shall procure construction in the following manner:
1. Through existing state contracts if available;
  2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2533 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;
  3. In accordance with A.R.S. § 41-2533 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or
  4. May procure construction in accordance with A.R.S. §§ 41-2536 or 41-2537.
- C. The agency chief procurement officer shall procure construction through an alternate project delivery method in the following manner:
1. Through existing state contracts if available;
  2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2578 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;
  3. In accordance with A.R.S. § 41-2578 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or
  4. May procure construction in accordance with A.R.S. §§ 41-2536 or 41-2537.

#### **R2-7-502. Coordination Compliance with the Department**

~~A purchasing agency procuring construction or architectural or engineering services for construction shall coordinate the procurement and contract administration with the Facilities Management Division of the Department as required by A.R.S. § 41-790 et seq.~~

A purchasing agency shall comply with the procurement and contract administration requirements of the Department as required by A.R.S. § 41-790 et. seq.

#### **R2-7-503. Bid Security Procurement of Construction Using Alternate Project Delivery Method**

~~A. Invitations for Bid on state construction contracts shall require the submission of bid security in an amount equal to at least 10% of the bid, at the time the bid is submitted. If a bidder fails to submit the required bid security with the bid, the bid shall be deemed nonresponsive except as provided by R2-7-503(C).~~

~~B. Acceptable bid security. Acceptable bid security shall be limited to:~~

- ~~1. An annual or one time surety bond executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Director of the Department of Insurance pursuant to A.R.S. Title 20, Chapter 2, Article 1 and in a form as prescribed by A.R.S. § 41-2573 and R2-7-505; or~~
- ~~2. A certified or cashier check.~~

~~C. Nonsubstantial failure to comply. The Assistant Director for Facilities Management may determine that noncompliance is nonsubstantial if:~~

- ~~1. Only one bid is received and there is not sufficient time to rebid; or~~
- ~~2. The amount of the bid security submitted, although less than the amount required by the Invitation for Bids, is equal to or greater than the difference between the apparent low bid and the next higher acceptable bid; or~~
- ~~3. The bid security is inadequate as a result of correcting or modifying a bid in accordance with R2-7-319, if the bidder increases the amount of security to required limits within two days after notification.~~

The agency chief procurement officer may use an alternate project delivery method if the agency chief procurement officer determines in writing that it is in the best interest of the state pursuant to A.R.S. § 41-2578, based on the following factors:

1. Cost and cost control method;
2. Value engineering;
3. Market conditions;
4. Schedule;
5. Required specialized expertise;
6. Technical complexity of the project; or
7. Project management.

#### **R2-7-504. Performance and Payment Bonds Notice**

~~A. Acceptable performance and payment bonds shall be limited to a performance bond and a payment bond executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Director of the Department of Insurance pursuant to A.R.S. Title 20, Chapter 2, Article 1 and in a form prescribed by A.R.S. § 41-2574 and R2-7-505.~~

~~B. The performance bond and the payment bond shall be delivered by the contractor to the state at the same time the contract is executed. If a contractor fails to deliver the required performance bond or payment~~

~~bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made pursuant to this Chapter.~~

- A. The agency chief procurement officer shall provide a copy of a solicitation for specified professional services or construction services to any person who requests a copy of the solicitation.
- B. For procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535, the agency chief procurement officer shall provide notice of the procurement in accordance with Part D of Article 3 of this Chapter, unless otherwise authorized pursuant to A.R.S. §§ 41-2536 or 41-2537.
- C. For procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535:
  - 1. The agency chief procurement officer shall make the solicitation available to prospective offerors registered at the State Procurement Office for the specific material, service, or construction being solicited; and
  - 2. The agency chief procurement officer shall advertise at least once in a general circulation or industry trade publication. If practicable, the date of the advertisement shall be at least 15 days before the offer due date.

#### **R2-7-505. ~~Bond Forms~~ Selection Committee**

~~Bid bonds, performance bonds, and labor and material payment bonds shall be executed on forms substantially equivalent to SPO 301, SPO 302, and SPO 303, respectively, on file with the Secretary of state and incorporated by this reference.~~

- A. The agency chief procurement officer shall appoint a selection committee when required under A.R.S. § 41-2578.
- B. For the procurement of specified professional services not estimated to exceed the amount prescribed in A.R.S. § 41-2578(C)(2), the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(1) and shall consist of three to five members who are appropriately qualified including the agency chief procurement officer as chair.
- C. For the procurement of specified professional services estimated to exceed the amount prescribed in A.R.S. § 41-2578(C)(2), the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(2) and shall consist of three to seven members who are appropriately qualified including the agency chief procurement officer as chair.

#### **R2-7-506. ~~The Form of Substitute Bid Security~~**

~~The form of security that may substitute for contract payment retention is limited to the following:~~

- 1. ~~An assignment of time certificates of deposit by financial institutions licensed by this state;~~
- 2. ~~Share certificate of a saving and loan institution or credit union authorized to transact business in this state; or~~
- 3. ~~Security issued or guaranteed as to principal and interest by:~~
  - a. ~~The United States;~~

- b. ~~The state;~~
- c. ~~Counties, municipalities and school districts within this state.~~
- A. The agency chief procurement officer shall include the bid security requirements of A.R.S. § 41-2573 in the solicitation.
- B. If an offeror fails to submit the bid security required by A.R.S. § 41-2573 with the offer, the agency chief procurement officer shall reject the offer.
- C. The offeror shall submit bid security in one of the following forms:
  - 1. An annual or one-time surety bond executed solely by a surety company authorized to transact surety business in this state, issued by the Director of the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1, and in a format prescribed by A.R.S. § 41-2573 and this Section; or
  - 2. A certified or cashier check.
- D. The state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, may issue a written determination to accept the bid security if the bid security fails to comply in a nonsubstantial manner when:
  - 1. Only one offer is received and there is not sufficient time to re-solicit;
  - 2. The amount of the bid security submitted, although less than the amount required by the solicitation, is equal to or greater than the difference between the apparent low offer and the next higher acceptable offer; or
  - 3. The bid security is inadequate as a result of correcting or modifying an offer in accordance with R2-7-B310, if the offeror increases the amount of the security to required limits within two days after notification.
- E. The state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, shall determine if the bid security may be released without penalty under § 41-2573(E).

**R2-7-507. Conditions for Use of Substitute Security Offer Mistakes Discovered After Offer Opening and Before Award**

- A. ~~A contractor may submit substitute security to replace contract payment retention if:~~
  - 1. ~~The use of substitute security is requested of the Director for work performed under the contract;~~
  - 2. ~~The substitute security is submitted prior to each progress payment in an amount of no less than 10% of each progress payment or once in an amount no less than 10% of the total contract amount;~~
  - 3. ~~The interest earned on such security shall accrue to the benefit of the contractor but shall be retained until the procurement officer has approved completion and acceptance of all work to be performed under the contract;~~
  - 4. ~~The term of such security shall not mature until after the estimated contract completion date;~~

- ~~5. The security shall mature no later than one year after the estimated contract completion date; and~~
- ~~6. The substitute security shall not be released without written approval by procurement officer.~~
- ~~B. A contractor may submit a single substitute security for more than one project provided that:~~
  - ~~1. The amount of such security is no less than 10% of the aggregate amount of all contracts or all progress payments;~~
  - ~~2. The Director determines that such single substitute security is advantageous to the state; and~~
  - ~~3. Such security complies with the requirements of subsection (A) of this rule.~~
- A. If an apparent mistake, relevant to the award determination is discovered after offer opening and before award, the agency chief procurement officer shall contact the offeror for written confirmation of the offer. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
  1. Confirm that no mistake was made and assert that the offer stands as submitted; or
  2. Acknowledge that a mistake was made, and include all of the following in a written response:
    - a. Explanation of the mistake and any other relevant information;
    - b. A request for correction including the corrected offer or a request for withdrawal; and
    - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing, and shall include all of the following in the written request:
  1. Explanation of the mistake and any other relevant information;
  2. A request for correction including the corrected offer or a request for withdrawal; and
  3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- C. An agency chief procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The agency chief procurement officer shall not permit a correction that is prejudicial to the state or fair competition.
- D. An agency chief procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.
- E. An agency chief procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the state.
- F. If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the agency chief procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

**R2-7-508. Repealed Performance and Payment Bonds**

- A. The agency chief procurement officer shall ensure that performance and payment bonds are executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1 and in a format prescribed by A.R.S. § 41-2574.
- B. The contractor shall submit to the state the performance bond and the payment bond upon request of the agency chief procurement officer. If a contractor fails to deliver the required performance bond or payment bond by the designated date, the contractor's offer shall be rejected, its bid security shall be enforced, and award of the contract shall be made as prescribed in this Chapter.

**R2-7-509. Procurement of Specified Professional Services Conditions for Use of Substitute Security in Lieu of Retention**

- A. ~~Annual statement of qualifications and performance data. Firms desiring to provide specified professional services to the state may submit annually to the State Procurement Office a statement of qualifications and performance data which shall include, but not be limited to, the following:~~
- ~~1. The education, training, and qualifications of members of the firm and key employees;~~
  - ~~2. An executed United States General Services Administration Standard Form 254;~~
  - ~~3. Any other pertinent information requested by the procurement officer.~~
- B. ~~Firms may amend statements of qualifications and performance by filing a new statement.~~
- C. ~~The Director shall publish an informational brochure, which shall be available in the State Procurement Office, to assist firms desiring to provide specified professional services.~~

A contractor may submit substitute security to replace contract payment retention if:

1. The contractor requests the use of substitute security before the first progress payment;
2. The contractor submits an invoice with each progress payment in an amount of no less than 10% of the progress payment, or the contractor submits an invoice once at the beginning of the project in an amount no less than 5% of the total contract amount;
3. The interest earned on the security shall accrue to the benefit of the contractor but shall be retained by the contractor until the agency chief procurement officer has approved completion and acceptance of all work to be performed under the contract; and
4. The contractor ensures that the date of maturity of the security is after the estimated contract completion date, but no later than one year after the estimated contract completion date.

**R2-7-510. Public Notice of Specified Professional Services The Form of Substitute Security in Lieu of Retention**

- A. ~~Prior to public notice of the need for specified professional services, the head of the using agency shall determine in writing that the services to be acquired are services defined in A.R.S. § 41-2571 and may recommend that the services be obtained pursuant to rule R2-7-514 or R2-7-515.~~

- ~~B. Notice of need for specified professional services shall be given by the procurement officer pursuant to R2-7-313©. Such notice shall be issued not less than 14 days in advance of when responses must be received. The notice shall contain a statement of the services required that adequately describes the project and specifies how a solicitation containing specific information on the project may be obtained.~~
- ~~C. A request for proposals or request for supplemental statements that describes the state's project requirements, shall be issued to all firms responding to the public notice. Notice of any pre-proposal conference and the criteria to be used in selecting firms shall be included in the request.~~

If the conditions identified under R2-7-506 are met, the agency chief procurement officer shall accept a substitute security from a contractor in the form of one of the following:

1. An assignment of a time certificate of deposit by a financial institution licensed by this state;
2. Share certificates of a financial institution or credit union authorized to transact business in this state;  
or
3. Security issued or guaranteed as to principal and interest by:
  - a. The United States;
  - b. The state; or
  - c. Counties, municipalities, and school districts within this state.

**R2-7-511. Specified Professional Services Selection Committee Individual Job Order Contracting**

- ~~A. If a contract for specified professional services is expected to exceed the amount established by A.R.S. § 41-2535, the head of a purchasing agency shall designate an appropriate selection committee. The selection committee shall be comprised of an uneven number and not less than three members who shall serve at the pleasure of the head of the purchasing agency. Selection committee members shall include:~~
- ~~1. The procurement officer to serve as chairman;~~
  - ~~2. A representative of the using agency;~~
  - ~~3. A person registered in one of the professions involved in the proposed project;~~
  - ~~4. If the estimated project cost is expected to exceed \$2,000,000, a non state employee registered in one of the professions involved in the proposed project.~~
  - ~~5. Such other members as the head of a purchasing agency shall deem appropriate.~~
- ~~B. The selection committee shall evaluate:~~
- ~~1. Annual statement of qualifications and performance data of those firms responding to the request;~~
  - ~~2. Proposals or supplemental statements.~~
- ~~C. No person serving on the selection committee shall receive any direct or indirect benefit from the project under consideration.~~
- A. The state procurement administrator may award or authorize an agency chief procurement officer to award job order contracts for job orders estimated to cost \$1,000,000 or less.



- B. An agency chief procurement officer may use job order contracting for individual job orders estimated to cost \$250,000 or less, provided that:
1. The agency chief procurement officer obtains a cost estimate for the job order, before obtaining a cost proposal from the job order contractor; and
  2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.
- C. When authorized by the state procurement administrator, an agency chief procurement officer may use job order contracting for individual job orders estimated to cost more than \$250,000 or less than or equal to \$1,000,000, provided that:
1. The agency chief procurement officer obtains a cost estimate for the job order from a person as defined in A.R.S. Title 32, Chapter 1, Article 1 before requesting a cost proposal from the job order contractor; and
  2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.
- D. The agency chief procurement officer may request cost proposals from multiple job order contractors or negotiate with a single job order contractor.
- E. The agency chief procurement officer may authorize contract change orders or amendments that result in the individual job order cost exceeding \$1,000,000 only with authorization from the state procurement administrator.
- F. Upon completion of the job order, the agency chief procurement officer shall document in the contract file a summary of the estimated or final costs and the reasons the award is in the best interests of the state.

**R2-7-512. Cancellation or Rejection of the Solicitation Repealed**

~~The solicitation may be cancelled or proposals rejected in accordance with R2-7-350, R2-7-351, R2-7-352 and R2-7-353.~~

**R2-7-513. Selection Committee Evaluation Repealed**

- ~~A. To the extent possible, the selection committee shall, when using the single negotiated fee method pursuant to R2-7-514 select no fewer than three firms; or, when using the multiple fee proposals method pursuant to R2-7-515, select no fewer than five firms as being professionally and technically qualified. These firms shall be evaluated to determine each firm's:~~
- ~~1. Capabilities and qualifications for performing the contract; and~~
  - ~~2. Methods of approach.~~
- ~~B. The selection committee shall prepare a memorandum of the selection process which indicates how the evaluation criteria were applied to determine the ranking of the three most qualified firms.~~

#### **R2-7-514. Single Negotiated Fee Method of Award Repealed**

- ~~A. The procurement officer shall negotiate a contract with the most qualified firm for the required services at compensation determined in writing to be fair and reasonable to the state. Contract negotiations shall be directed toward:~~
- ~~1. Making certain that the firm has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;~~
  - ~~2. Determining that the firm will make available the necessary personnel and facilities to perform the services within the required time; and~~
  - ~~3. Agreeing upon compensation that is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.~~
- ~~B. The firm selected for award shall submit and certify cost and pricing data pursuant to A.R.S. § 41-2543.~~
- ~~C. Failure to negotiate with the most qualified firm~~
- ~~1. If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the most qualified firm, the procurement officer shall advise the firm in writing of the termination of negotiations.~~
  - ~~2. The procurement officer shall negotiate with the next most qualified firm in sequence or cancel the solicitation.~~
- ~~D. Written notice of the award shall be sent to the firm with whom the contract is successfully negotiated. Each firm with whom discussions were held shall be notified of the award. Notice of award shall be made available to the public.~~
- ~~E. After award of the contract, a memorandum setting forth the principal elements of the negotiation shall be prepared by the procurement officer. Such memorandum shall contain sufficient detail to reflect the significant considerations controlling price and the other terms of the contract. Such memorandum shall be included in the procurement file and be available to the public upon request.~~

#### **R2-7-515. Multiple Fee Proposal Method of Award Repealed**

- ~~A. The director or head of a purchasing agency shall select a professional architect, engineer, land surveyor, landscape architect, assayer or geologist, as appropriate, to prepare and seal a scope of services.~~
- ~~B. After determination of the three firms deemed to be the most highly qualified, the selection committee shall issue a request for the fee proposal to such firms.~~
- ~~C. Firms shall be afforded fair and equal treatment with respect to any opportunity for discussions and revisions of fee proposals. The procurement officer shall establish procedures and schedules for conducting discussions. If during discussions there is a need for any substantial clarification or change in the scope of services, it shall be amended to incorporate such clarification or change. Disclosure of any information derived from competing fee proposals is prohibited. Any substantial oral clarification~~

of a fee proposal shall be reduced to writing by the offeror. The procurement officer shall keep a record of the date, time, place, purpose, and persons in attendance at such meetings.

~~D. The procurement officer shall establish a common date and time for the submission of final offers. Final offers shall be submitted only once, provided, however, the Assistant Director for Facilities Management may make a written determination that it is advantageous to the state to conduct additional discussions or change the state's requirements and require another submission of final offers. Otherwise, no discussions of or changes in the final offers shall be allowed prior to selection for award. Firms shall also be informed that if they do not submit a notice of withdrawal or another final offer, their immediate previous offer will be construed as their final offer.~~

~~E. Notice of award shall be made in accordance with R2-7-514(D) and (E).~~

## ARTICLE 6. CONTRACT CLAUSES

### **R2-7-601. Standard Terms and Conditions Contract Clauses**

~~State governmental units that have been delegated procurement authority by the Director shall use as standard terms and conditions in contracts for materials, services or construction clauses approved by the Director.~~

The agency chief procurement officer shall include in solicitations and contracts all contract clauses necessary to ensure the state's interests are addressed.

### **R2-7-602. Assignment of Rights and Duties**

A contractor shall not assign or transfer the rights or duties of a state contract without the written consent of the agency chief procurement officer.

### **R2-7-603. Change of Name**

If a contractor requests to change the name in which it holds a state contract, the agency chief procurement officer may, upon receipt of a document indicating name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.

### **R2-7-604. Contract Change Orders and Amendments**

- A. The agency chief procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.
- B. Any contract change order or amendment not covered under subsection (A) that exceeds \$100,000 may be executed only if the state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, determines in writing that the change order or amendment is advantageous to the state and the price is determined fair and reasonable pursuant to R2-7-702.

- C. The agency chief procurement officer may, in situations in which time or economic consideration preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements under A.R.S. § 41-2537.

#### **R2-7-605. Multi-term Contracts**

- A. With a written determination from state procurement administrator that an extension of time would be advantageous to the state, the agency chief procurement officer may enter into a contract for materials or services for a period exceeding the time identified in A.R.S. § 41-2546(A).
- B. The agency chief procurement officer shall submit a request to the state procurement administrator in writing indicating:
1. The time period requested for the contract;
  2. Documentation that the estimated requirements are reasonable and continuing;
  3. Documentation that such a contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.
- C. The agency chief procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

#### **R2-7-606. Terms and Conditions**

- A. The state procurement administrator may publish uniform terms and conditions for use in solicitations and contracts issued by a state governmental unit.
- B. The state procurement administrator may authorize an agency chief procurement officer to make changes to uniform terms and conditions.

### **ARTICLE 7. COST PRINCIPLES**

#### **R2-7-701. Cost Principles**

The cost principles set forth in the Code of Federal Regulations, 48 CFR 31, (~~October 1, 1991~~ September 2001) ~~excluding later amendments and editions, on file with the Secretary of State and incorporated by this reference,~~ shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. This document is incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.

**R2-7-702. Determination of Fair and Reasonable Price**

- A. For contracts or contract modifications that exceed \$100,000, the agency chief procurement officer shall determine in writing that the price is fair and reasonable only when one of the following requirements is met:
1. The contract or modification is based on adequate price competition;
  2. Price is supported by an established catalog or market prices;
  3. Price is set by law or rule; or
  4. Price is supported by relevant, historical price data.
- B. The agency chief procurement officer shall request the submission of cost or pricing data from the offeror or contractor when:
1. The agency chief procurement officer cannot determine the price is fair and reasonable based on the criteria in subsection (A); or
  2. The agency chief procurement officer determines in writing that it is in the best interest of the state regardless of the amount of the contract or contract modification.
- C. The agency chief procurement officer shall submit a request to the state procurement administrator to waive the requirement for submission of cost or pricing data to the state procurement administrator if the proposed contract or contract modification exceeds \$100,000. The request shall be in writing and state the reasons for the waiver.
- D. The state procurement administrator shall either:
1. Issue written approval of the request for waiver;
  2. Request additional information from the agency chief procurement officer upon which to base a decision; or
  3. Deny the request.

**R2-7-703. Submission and Certification of Cost or Pricing Data**

- A. The offeror or contractor shall submit certified cost or pricing data in the manner, and within the time-frames, prescribed by the agency chief procurement officer.
- B. The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.
- C. The offeror or contractor shall certify cost or pricing data by including a signed statement with the submission that all data is accurate, complete, and current to the best of the offeror's or contractor's knowledge and belief as of a date mutually determined with the agency chief procurement officer.

**R2-7-704. Refusal to Submit Cost or Pricing Data**

- A. If an offeror fails to submit cost or pricing data in the required form and within the time-frames required, the agency chief procurement officer may reject the offer.

- B. If a contractor fails to submit data to support a contract modification in the form required and within the time -frames required, the agency chief procurement officer may:
1. Reject the contract modification; or
  2. Set the amount of the contract modification subject to the contractor's rights under Article 9 of the Arizona Procurement Code.

**R2-7- 705. Defective Cost or Pricing Data**

- A. The agency chief procurement officer may reduce the contract price if, upon written determination, the cost or pricing data is defective.
- B. The agency chief procurement officer shall reduce the contract price in the amount of the defect plus related overhead and profit or fee, if the defective data was used in awarding the contract or contract modification.
- C. The offeror or contractor may appeal any dispute regarding the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data as a contract claim under Article 9 of this Chapter. The price, as adjusted by the agency chief procurement officer, shall remain in effect until any claim is settled or resolved under Article 9 of this Chapter.

**ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES**

**R2-7-901. Definitions Repealed**

~~In this Article, unless the context otherwise requires:~~

- ~~1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent-subsidiary relationship between persons.~~
- ~~2. "Debarment" means an action taken by the Director under R2-7-925 to prohibit a person from participating in state procurements.~~
- ~~3. "Filed" means delivery to the procurement officer or to the Director, whichever is applicable. A time/date stamp affixed to a document by the office of the procurement officer or the Director, whichever is applicable, shall be determinative of the time of delivery for purposes of filing.~~
- ~~4. "Governing instruments" means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.~~
- ~~5. "Interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by~~

the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.

6. "Suspension" means an action taken by the Director under R2-7-930 temporarily disqualifying a person from participating in state procurements.

#### **R2-7-902. Resolution of Bid Protests Repealed**

The procurement officer of the contracting agency issuing the solicitation shall have the authority to resolve bid protests. Appeals from the decisions of the procurement officer may be made to the Director pursuant to R2-7-909.

#### **R2-7-903. Filing of a Protest Repealed**

- A. Any interested party may protest a solicitation issued by the state, or the proposed award or the award of a state contract.
- B. Content of protest. The protest shall be in writing and shall include the following information:
1. The name, address and telephone number of the protester;
  2. The signature of the protester or its representative;
  3. Identification of the purchasing agency and the solicitation or contract number;
  4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
  5. The form of relief requested.

#### **R2-7-904. Time for Filing Protests Repealed**

- A. Protests concerning improprieties in a solicitation
1. Protests based upon alleged improprieties in a solicitation that are apparent before the bid opening shall be filed before bid opening. Protests based upon alleged improprieties in a solicitation that are apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals.
  2. In procurements requesting proposals, protests concerning improprieties that do not exist in the initial solicitation but that are subsequently incorporated into the solicitation shall be filed by the next closing date for receipt of proposals following the incorporation.
- B. In cases other than those covered in subsection (A) of this rule, protests shall be filed within ten days after the protester knows or should have known the basis of the protest, whichever is earlier.
- C. The protester shall give notice of the protest to the State Procurement Administrator within a reasonable time.
- D. If the protester shows good cause, the procurement officer of the contracting agency may consider any protest that is not filed timely.
- E. The procurement officer shall immediately give notice of the protest to all interested parties.

**R2-7-905. Stay of Procurements During the Protest Repealed**

~~If a protest is filed before the award of a contract or before performance of a contract has begun, the award may be made or contract performance may proceed, unless the State Procurement Administrator stays the contract award or performance on determining in writing that there is a reasonable probability that the protest will be sustained or that stay is not contrary to the best interests of the state.~~

**R2-7-906. Confidential Information Repealed**

- ~~A. Material submitted by a protester shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law as determined pursuant to A.R.S. § 41-2533(D) or 41-2534(D) and R2-7-104.~~
- ~~B. If the protester believes the protest contains material that should be withheld, a statement advising the procurement officer of this fact shall accompany the protest submission in accordance with R2-7-104.~~

**R2-7-907. Decision by the Procurement Officer Repealed**

- ~~A. The procurement officer of the purchasing agency shall issue a written decision within 14 days after a protest has been filed pursuant to R2-7-903. The decision shall contain an explanation of the basis of the decision and a statement that the decision may be appealed to the Director of the Department of Administration within five days from receipt of the decision.~~
- ~~B. The procurement officer shall furnish a copy of the decision to the protester, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.~~
- ~~C. The time limit for decisions set forth in subsection (A) of this rule may be extended by the Director for good cause for a reasonable time not to exceed 30 days. The Director shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.~~
- ~~D. If the procurement officer fails to issue a decision within the time limits set forth in subsection (A) or (C) of this rule, the protester may proceed as if the procurement officer had issued an adverse decision.~~

**R2-7-908. Remedies Repealed**

- ~~A. If the procurement officer of the purchasing agency sustains the protest in whole or part and determines that a solicitation, proposed contract award, or contract award does not comply with the procurement statutes and regulations, the officer shall implement an appropriate remedy.~~
- ~~B. In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the government, the urgency of the procurement, and the impact of the relief on the purchasing agency's mission.~~



C. An appropriate remedy may include one or more of the following:

1. Decline to exercise an option to renew under the contract;
2. Terminate the contract;
3. Amend the solicitation;
4. Issue a new solicitation;
5. Award a contract consistent with procurement statutes and regulations; or
6. Such other relief as is determined necessary to ensure compliance with procurement statutes and regulations.

**R2-7-909. Appeals to the Director Repealed**

A. An appeal from a decision entered or deemed to be entered by the procurement officer shall be filed with the Director within five days after the date the decision is received. The appellant shall also file a copy of the appeal with the procurement officer.

B. Content of appeal. The appeal shall contain:

1. The information set forth in R2-7-903(B), including the identification of protected information in the manner set forth in R2-7-906;
2. A copy of the decision of the procurement officer; and
3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.

**R2-7-910. Notice of Appeal Repealed**

A. The procurement officer shall immediately give notice of the appeal to interested parties.

B. The Director shall upon request furnish copies of the appeal to those named in subsection (A) of this rule subject to the provisions of R2-7-906.

**R2-7-911. Stay of Procurement During Appeal Repealed**

If a stay was issued pursuant to R2-7-905, the filing of an appeal shall automatically continue the stay unless the Director makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

**R2-7-912. Agency Report Repealed**

A. The procurement officer shall file a complete report on the appeal with the Director within ten days after the date the appeal is filed. At the same time, the procurement officer shall furnish a copy of the report to the appellant by certified mail, return receipt requested, and to any interested parties who have responded to the notice given pursuant to R2-7-910(B). The report shall contain copies of:

1. The appeal;
2. The bid or proposal submitted by the appellant;

3. The bid or proposal of the firm that is being considered for award;
4. The solicitation, including the specifications or portions relevant to the appeal;
5. The abstract of bids or proposals or relevant portions;
6. Any other documents that are relevant to the protest; and
7. A statement by the procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

**B. Extension for filing of report**

1. The procurement officer may request in writing an extension of the time period setting forth the reason for extension.
2. The Director's determination on the request shall be in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of the report. The Director shall notify the procurement officer and the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.

**C. Comments on report**

1. The appellant shall file comments on the agency report with the Director within seven days after receipt of the report. Copies of the comments shall be provided by the appellant to the procurement officer of the purchasing agency and other interested parties.
2. The Director may grant an extension on the time period to file comments pursuant to a written request made by the appellant within the period set forth in paragraph (C)(1) of this rule stating the reason an extension is necessary. The Director's determination on the request shall be in writing, state the reasons for the determination, and, if the extension is granted, set forth a new date for the filing of comments. The Director shall notify the procurement officer of any extension.

**R2-7-913. Dismissal Before Hearing Repealed**

The Director shall dismiss, upon a written determination, an appeal before scheduling a hearing if:

1. The appeal does not state a valid basis for protest; or
2. The appeal is untimely pursuant to R2-7-909(A).

**R2-7-914. Hearing Repealed**

Hearings on appeals of bid protest decisions shall be conducted as contested cases pursuant to these rules and the Arizona Administrative Procedure Act (Article 1, Chapter 6, Title 41, Arizona Revised Statutes).

**R2-7-915. Remedies Repealed**

If the Director sustains the appeal in whole or part and determines that a solicitation, proposed award, or award does not comply with procurement statutes and regulations, remedies shall be implemented pursuant to R2-7-908.

**R2-7-916. Contract Claims Repealed**

- ~~A. Claims under contracts shall be filed with the procurement officer administering the contract within 12 months after claim arises.~~
- ~~B. The procurement officer administering the contract shall have the authority to settle and resolve contract claims subject to subsection (C) of this rule. Appeals from decisions of the procurement officer may be made to the Director pursuant to R2-7-919.~~
- ~~C. The settlement or resolution of a claim in excess of \$10,000 requires the prior written approval of the State Procurement Administrator.~~

**R2-7-917. Procurement Officer's Decision Repealed**

- ~~A. If a claim cannot be resolved by mutual agreement, the procurement officer shall, upon a written request by the contractor for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.~~
- ~~B. Final decision. The procurement officer shall furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The decision shall include:~~
- ~~1. A description of the claim;~~
  - ~~2. A reference to the pertinent contract provision;~~
  - ~~3. A statement of the factual areas of agreement or disagreement;~~
  - ~~4. A statement of the procurement officer's decision, with supporting rationale;~~
  - ~~5. A paragraph substantially as follows:~~

~~"This is the final decision of the procurement officer. This decision may be appealed to the Director of the Department of Administration. If you appeal, you must file a written notice of appeal with the Director within five days from the date you receive this decision".~~

**R2-7-918. Issuance of a Timely Decision Repealed**

- ~~A. The time limit for decisions set forth in R2-7-917(A) may be extended for good cause for a reasonable time not to exceed 30 days. The procurement officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.~~
- ~~B. If the procurement officer fails to issue a decision within 60 days after the request is filed or within the time prescribed under subsection (A) of this rule, the contractor may proceed as if the procurement officer had issued an adverse decision.~~

**R2-7-919. Appeals and Reports to the Director Repealed**

- ~~A. An appeal from a final decision of a procurement officer on a claim shall be filed with the Director within five days from the date the decision is received. The appellant shall also file a copy of the appeal with the procurement officer.~~
- ~~B. Content of appeal. The appeal shall contain a copy of the decision of the procurement officer and the precise factual or legal error in the decision of the procurement officer from which an appeal is taken.~~
- ~~C. The procurement officer shall file a complete report on the appeal with the Director within ten days from the date the appeal is filed. At the same time, the procurement officer shall furnish a copy of the report to the appellant by certified mail, return receipt requested. The report at a minimum shall contain a copy of the claim, a copy of the procurement officer's decision, if applicable, and any other documents that are relevant to the claim.~~

**R2-7-920. Controversies Involving State Claims Against a Contractor Repealed**

~~All claims asserted by the state against a contractor that are not resolved by mutual agreement shall promptly be referred by the procurement officer to the Director for a hearing without regard to the procedures set forth in these rules R2-7-916 through R2-7-919.~~

**R2-7-921. Hearing Repealed**

~~Hearings on appeals of claims decisions shall be conducted as contested cases pursuant to these rules and the Arizona Administrative Procedure Act (Article 1, Chapter 6, Title 41, Arizona Revised Statutes).~~

**R2-7-922. Authority to Debar or Suspend Repealed**

~~The Director has the sole authority to debar or suspend a person from participating in state procurements.~~

**R2-7-923. Initiation of Debarment Repealed**

~~Upon receipt of information concerning a possible cause for debarment, the Director shall investigate the possible cause. If the Director has a reasonable basis to believe that a cause for debarment exists, the Director may propose debarment under R2-7-925.~~

**R2-7-924. Period of Debarment Repealed**

- ~~A. The period of time for a debarment shall not exceed three years from the date of the debarment determination.~~
- ~~B. If debarment is based solely upon debarment by another governmental agency, the period of debarment may run concurrently with the period established by that other debarring agency.~~

**R2-7-925. Notice Repealed**

~~If the Director proposes debarment, the Director shall notify the person and affected affiliates in writing within seven days by certified mail, return receipt requested, of the proposed debarment and that a hearing shall be scheduled in accordance with this Article.~~

**R2-7-926. Notice to Affiliates Repealed**

- ~~A. If the Director proposes to debar an affiliate, the affiliate shall have a right to appear in any hearing on the proposed debarment to show mitigating circumstances.~~
- ~~B. The affiliate shall in writing advise the Director within 30 days of receipt of the notice under R2-7-925 of its intention to appear under subsection (A) of this rule. Failure to provide written notice of appearance within the 30-day period shall be a waiver of the right to appear in the hearing.~~

**R2-7-927. Imputed Knowledge Repealed**

- ~~A. Improper conduct may be imputed to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.~~
- ~~B. The improper conduct of a person or its affiliate having a contract with a contractor may be imputed to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.~~

**R2-7-928. Reinstatement Repealed**

- ~~A. The Director may at any time after a final decision on a debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.~~
- ~~B. Any debarred person may request reinstatement by submitting a petition to the Director supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.~~
- ~~C. The Director may require a hearing on the request for reinstatement.~~
- ~~D. The decision on reinstatement shall be in writing, be made within seven days after the request for a hearing is filed and specify the factors on which it is based.~~
- ~~E. Decisions on reinstatement requests are not subject to judicial appeal.~~

**R2-7-929. Limited Participation Repealed**

~~The Director may allow a debarred person to participate in state contracts on a limited basis during the debarment period upon a written determination that participation is advantageous to the state. The determination shall specify the factors on which it is based and define the extent of the limits imposed.~~

**R2-7-930. Suspension Repealed**

- A. ~~If adequate grounds for debarment exist, the Director may suspend a person from receiving any award in accordance with the procedures in R2-7-932.~~
- B. ~~The Director shall not suspend a person pending debarment unless compelling reasons require suspension to protect state interests.~~

**R2-7-931. Period and Scope of Suspension Repealed**

- A. ~~Unless otherwise agreed to by the parties, the period of suspension shall not be more than 30 days without satisfying the notice requirements of R2-7-932.~~
- B. ~~For purpose of suspension, a person's conduct may be imputed to an affiliate or another person in accordance with R2-7-927.~~

**R2-7-932. Notice, Hearing, Determination, and Appeal Repealed**

- A. ~~The Director shall notify the person suspended by personal service or certified mail, return receipt requested.~~
- B. ~~The notice of suspension shall state:~~
  - 1. ~~The basis for suspension;~~
  - 2. ~~The period, including dates, of the suspension;~~
  - 3. ~~That bids or proposals shall not be solicited or accepted from the person and, if received, will not be considered; and~~
  - 4. ~~That the person is entitled to a hearing on the suspension if the person files a written request for a hearing with the Director within seven days after receipt of the notice.~~
- C. ~~If a suspended party requests a hearing, the hearing officer shall arrange for a prompt hearing unless the Attorney General determines that a hearing at such time is likely to jeopardize an investigation. In no case shall the hearing be delayed longer than six months after notice of suspension.~~
- D. ~~A hearing requested under this Section shall be conducted, to the extent practicable, in accordance with these rules and the Arizona Administrative Procedure Act (Article 1, Chapter 6, Title 41, Arizona Revised Statutes).~~

**R2-7-933. Master List Repealed**

- A. ~~The Director shall maintain a master list of debarments, suspension, and voluntary exclusions under this Article.~~
- B. ~~The master list shall show as a minimum the following information:~~
  - 1. ~~The names and vendor number of those persons whom the state has debarred or suspended under this Article;~~
  - 2. ~~The basis of authority for the action;~~
  - 3. ~~The period of debarment or suspension, including the expiration date; and~~

4. ~~The name of the debarring or suspending agency, if the state's debarment or suspension is based on debarment or suspension by another governmental agency.~~
- C. ~~The master list shall include a separate action listing persons voluntarily excluded from participation in state contracts.~~

**R2-7-934. Hearing Procedures Repealed**

- A. ~~If a hearing is required or permitted under these rules, the Director shall act as a hearing officer or appoint a hearing officer. The Director may also direct the parties to engage in settlement negotiations or alternative disputes resolution procedures before scheduling a hearing.~~
- B. ~~If a hearing is required or permitted under these rules, the hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing.~~
- C. ~~The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.~~
- D. ~~The hearing officer may:~~
1. ~~Hold pre hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;~~
  2. ~~Require parties to state their positions concerning the various issues in the proceeding;~~
  3. ~~Require parties to produce for examination those relevant witnesses and documents under their control;~~
  4. ~~Rule on motions and other procedural items on matters pending before such officer;~~
  5. ~~Regulate the course of the hearing and conduct of participants;~~
  6. ~~Establish time limits for submission of motions or memoranda;~~
  7. ~~Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:~~
    - a. ~~Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;~~
    - b. ~~Excluding all testimony of an unresponsive or evasive witness; and~~
    - c. ~~Expelling person from further participation in the hearing;~~
  8. ~~Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and~~
  9. ~~Administer oaths or affirmations; and~~
  10. ~~Issue a stay of contract award or contract performance.~~
- E. ~~A transcribed record of the hearing shall be made available at cost to the requesting party.~~

**R2-7-935. Recommendation by the Hearing Officer Repealed**

- A. ~~The hearing officer shall make a recommendation to the Director based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.~~

~~B. The Director may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or make any other appropriate disposition.~~

**R2-7-936. Final Decision by the Director Repealed**

~~A decision by the Director shall be final. The decision shall be sent within 20 days after the conclusion of the hearing to all parties by personal service or certified mail, return receipt requested. The decision shall state that any party adversely affected may within ten days request a rehearing with the Director.~~

**R2-7-937. Rehearing of Director's Decision Repealed**

~~A. Any party, including a procurement officer, who is aggrieved by the Director's decision may file a written request for rehearing of the decision specifying the particular grounds.~~

- ~~1. The request for rehearing shall be filed with the Director within ten days after receipt of the decision and shall include any supporting affidavits.~~
- ~~2. The request shall be clearly designated as a "Request for Rehearing".~~
- ~~3. The Director shall within five days after the request is filed notify interested parties of the request by personal service or certified mail, return receipt requested.~~

~~B. An interested party may within ten days after receipt of the notice file a response including opposing affidavits.~~

~~C. Any argument not raised in the request or in a response is waived.~~

~~D. The Director may require the filing of written briefs and may provide for oral argument.~~

~~E. A rehearing of the decision may be granted for any of the following causes:~~

- ~~1. Irregularity in the proceedings before the Director or an abuse of discretion by the Director, depriving the requesting party of a fair hearing;~~
- ~~2. Misconduct of the Director, his staff or the hearing officer or any party;~~
- ~~3. Accident or surprise that could not have been prevented by ordinary prudence;~~
- ~~4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;~~
- ~~5. Excessive or insufficient penalties;~~
- ~~6. Error in the admission or rejection of evidence or other error of law occurring at the hearing;~~
- ~~7. A showing that the decision is not justified by the evidence or is contrary to law.~~

~~F. The Director's decision concerning a request for rehearing shall be in writing and shall state the basis of the decision. A decision granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the date, time and place of the rehearing. The rehearing shall cover only those matters specified in the decision.~~



- G. ~~The Director, within the time for filing a request for rehearing under this rule, may on his own initiative order a rehearing of his decision for any reason for which he might have granted a rehearing on request of a party.~~

## **PART A. PROTEST OF SOLICITATIONS AND CONTRACT AWARDS**

### **R2-7-A901. Protest of Solicitations and Contract Awards**

- A. Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.
- B. The interested party shall file the protest in writing with the agency chief procurement officer, with a copy to the state procurement administrator, and shall include the following information:
1. The name, address and telephone number of the interested party;
  2. The signature of the interested party or the interested party's representative;
  3. Identification of the purchasing agency and the solicitation or contract number;
  4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
  5. The form of relief requested.
- C. If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.
- D. In cases other than those covered in subsection (C), the interested party shall file the protest within 10 days after the agency chief procurement officer makes the procurement file available for public inspection.
- E. The interested party may submit a written request to the agency chief procurement officer for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D) and shall set forth good cause as to the specific action or inaction of the purchasing agency that resulted in the interested party being unable to submit the protest within the 10 days. The agency chief procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted set forth a new date for submission of the filing.
- F. If the interested party shows good cause, the agency chief procurement officer may consider a protest that is not timely filed.
- G. The agency chief procurement officer shall immediately give notice of a protest to all offerors.

### **R2-7-A902. Stay of Procurements During the Protest**

- A. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the state procurement administrator shall make a written determination to either:

1. Proceed with the award or contract performance; or
  2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the state.
- B. The state procurement administrator shall provide the interested party, agency chief procurement officer, and other interested parties with a copy of the written determination.
- C. The agency chief procurement officer may stay all or part of the procurement if it is determined that there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the state. The agency chief procurement officer shall notify the state procurement administrator and all interested parties of the stay in writing.

#### **R2-7-A903. Resolution of Solicitation and Contract Award Protests**

- A. The agency chief procurement officer has the authority to resolve a protest.
- B. The agency chief procurement officer shall issue a written decision within 14 days after a protest has been filed under R2-7-A901. The decision of the agency chief procurement officer shall contain the basis for the decision and a statement that the decision may be appealed to the Director within 30 days from receipt of the decision.
- C. The agency chief procurement officer shall furnish the decision to the interested party, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator and the director.
- D. The agency chief procurement officer may submit a written request to the director for an extension of the time limit for decisions under subsection (B). The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the decision, not to exceed an additional 30 days. The director shall notify the agency chief procurement officer, the interested party, and the state procurement administrator in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
- E. If the agency chief procurement officer fails to issue a decision within the time limits set forth in this Article, the interested party may proceed as if the agency chief procurement officer had issued an adverse decision.

#### **R2-7-A904. Remedies by the Agency Chief Procurement Officer**

- A. If the agency chief procurement officer sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the procurement statutes and regulations, the agency chief procurement officer shall implement an appropriate remedy.
- B. In determining an appropriate remedy, the agency chief procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:

1. The seriousness of the procurement deficiency;
  2. The degree of prejudice to other interested parties or to the integrity of the procurement system;
  3. The good faith of the parties;
  4. The extent of performance;
  5. The costs to the state;
  6. The urgency of the procurement;
  7. The impact on the agency's mission; and
  8. Other relevant issues
- C. An agency chief procurement officer may implement any of the following appropriate remedies:
1. Decline to exercise an option to renew under the contract;
  2. Terminate the contract;
  3. Amend the solicitation;
  4. Issue a new solicitation;
  5. Award a contract consistent with procurement statutes and regulations; or
  6. Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations.

#### **R2-7-A905. Appeals to the Director**

- A. An interested party may appeal the decision entered or deemed to be entered by the agency chief procurement officer to the director within 30 days after the date the decision is received or deemed received under R2-7-A903. The interested party shall file a copy of the appeal with the director, the agency chief procurement officer, and the state procurement administrator.
- B. The interested party shall file the appeal in writing and shall include the following information:
1. The information prescribed in R2-7-A901(B) including the identification of confidential information under R2-7-103;
  2. A copy of the decision of the agency chief procurement officer; and
  3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.
- C. The director may consider any appeal that is not filed timely if:
1. The interested party shows good cause; or
  2. The director finds there is good cause.

#### **R2-7-A906. Notice of Appeal to the Director**

- A. The agency chief procurement officer shall promptly give notice of the appeal to all offerors.
- B. The director shall, upon request, furnish copies of the appeal to all offerors subject to the provisions of R2-7-103.

**R2-7-A907. Stay of Procurement During Appeal to Director**

- A. If a stay is issued under R2-7-A902, the filing of an appeal shall automatically continue the stay, unless the Director makes a written determination that the award of the contract or a notice to proceed with contract performance is necessary to protect the substantial interests of the state.
- B. Following a review of the agency chief procurement officer's or the state procurement officer's decision and the interested party's appeal, the director may stay the procurement if the director determines that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the state.

**R2-7-A908. Agency Report**

- A. The agency chief procurement officer shall file a complete report on the appeal with the director and the state procurement administrator within 14 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The agency chief procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
1. The appeal;
  2. The offer submitted by the interested party;
  3. The offer of the firm that is being considered for award;
  4. The solicitation, including the specifications or portions relevant to the appeal;
  5. The abstract of offers or relevant portions;
  6. Any other documents that are relevant to the protest; and
  7. A statement by the agency chief procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.
- B. The agency chief procurement officer may submit a written request to the director for an extension of the time period for filing the report as prescribed in subsection (A), identifying the reason for extension. The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of the report. The director shall notify the agency chief procurement officer, the state procurement administrator, and the interested party in writing that the time for the submission of the report is extended, providing the date on which the report must be submitted.
- C. The interested party shall file comments on the agency report with the director within 10 days after receipt of the report. The interested party shall provide copies of the comments to the agency chief procurement officer, the state procurement administrator, and other interested parties.
- D. The interested party may submit a written request to the director for an extension of the period for submission of comments, identifying the reasons for the extension. The director shall approve or

deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments. The director shall notify the agency chief procurement officer and the state procurement administrator of any extension.

#### **R2-7-A909. Remedies by the Director**

If the director sustains the appeal in whole or part and determines that a solicitation, a not susceptible for award determination, or an award does not comply with procurement statutes and regulations, the director shall implement remedies as provided in R2-7-A904.

#### **R2-7-A910. Dismissal Before Hearing**

- A. The director shall dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:
1. The appeal does not state a valid basis for protest;
  2. The appeal is untimely as prescribed under R2-7-A905; or
  3. The appeal attempts to raise issues not raised in the protest.
- B. The Director shall notify the interested party, the agency chief procurement officer, and the state procurement administrator in writing of a determination to dismiss an appeal before hearing.

#### **R2-7-A911. Hearing**

The Director shall resolve appeals of solicitation or contract award decisions as contested cases under A.R.S. §41-1092.07.

### **PART B. CONTRACT CLAIMS**

#### **R2-7-B901. Controversies Involving Contract Claims Against the State**

- A. A claimant shall file a contract claim with the agency chief procurement officer, with a copy to the state procurement administrator, within 180 days after the claim arises. The claim shall include the following:
1. The name, address, and telephone number of the claimant;
  2. The signature of the claimant or claimant's representative;
  3. Identification of the purchasing agency and the solicitation or contract number;
  4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
  5. The form and dollar amount of the relief requested.
- B. The agency chief procurement officer shall have the authority to settle and resolve contract claims, except that the agency chief procurement officer shall receive prior written approval of the state procurement administrator for the settlement or resolution of a claim in excess of the amount prescribed in A.R.S. § 41-2535.

#### **R2-7-B902. Agency Chief Procurement Officer's Decision**

- A. If a claim cannot be resolved under R2-7-B901, the agency chief procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the agency chief procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- B. The agency chief procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator. The decision shall include:
  - 1. A description of the claim;
  - 2. A reference to the pertinent contract provision;
  - 3. A statement of the factual areas of agreement or disagreement;
  - 4. A statement of the agency chief procurement officer's decision, with supporting rationale;
  - 5. A paragraph which substantially states: "This is the final decision of the agency chief procurement officer. This decision may be appealed to the director of the Department of Administration. If you appeal, you must file a written notice of appeal containing the information required in R2-7-B904(B) with the director within 30 days from the date you receive this decision."

#### **R2-7-B903. Issuance of a Timely Decision**

If the agency chief procurement officer fails to issue a decision within 60 days after the request is filed, the claimant may proceed as if the agency chief procurement officer had issued an adverse decision.

#### **R2-7-B904. Appeals and Reports to the Director**

- A. The claimant may appeal the final decision of the agency chief procurement officer to the director within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the director, the agency chief procurement officer, and the state procurement administrator.
- B. The claimant shall file the appeal in writing and shall include the following:
  - 1. A copy of the decision of the agency chief procurement officer;
  - 2. A statement of the factual areas of agreement or disagreement; and
  - 3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.
- C. The agency chief procurement officer shall file a complete report on the appeal with the director and the state procurement administrator within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the agency

chief procurement officer's decision, if applicable, and any other documents that are relevant to the claim.

- D. The director shall resolve appeals on claim decisions as contested cases under A.R.S. §41-1092.07.

#### **R2-7-B905. Controversies Involving State Claims Against the Contractor**

If the agency chief procurement officer is unable to resolve, by mutual agreement, a claim asserted by the state against a contractor, the agency chief procurement officer shall promptly refer the matter in writing to the director for resolution under A.R.S. §41-1092.07. The agency chief procurement officer shall furnish a copy of the claim to the state procurement administrator.

### **PART C. DEBARMENTS AND SUSPENSIONS**

#### **R2-7-C901. Authority to Debar or Suspend**

The director has the sole authority to debar or suspend a person from participating in state procurements under A.R.S. §41-2613.

#### **R2-7-C902. Initiation of Debarment**

Upon receipt of information concerning a possible cause for debarment, the director shall investigate the possible cause. If the director has a reasonable basis to believe that a cause for debarment exists, the director may propose debarment under R2-7-C904.

#### **R2-7-C903. Period of Debarment**

- A. The director shall not establish the period of time for a debarment that exceeds three years from the date of the debarment determination.
- B. If debarment is based solely upon debarment by another governmental agency, the director may establish that the period of debarment is to run concurrently with the period established by the other debarring agency.

#### **R2-7-C904. Notice of Debarment and Hearing**

- A. If debarment is proposed, the director shall notify the person and affected affiliates in writing within seven days by certified mail, return receipt requested, or any other method that provides evidence of receipt. The notice shall state that the person and affected affiliates have the right to a hearing to contest the proposed debarment.
- B. The person proposed for debarment and any affected affiliates shall file a written request for a hearing within 10 days of receipt of the director's notice of proposed debarment.
- C. The hearing shall be conducted as a contested case under A.R.S. §§41-1092.07 and 41-2613.

#### **R2-7-C905. Imputed Knowledge**

- A. The director may attribute improper conduct to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.
- B. The director may attribute improper conduct of a person or its affiliate having a contract with a contractor to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.

#### **R2-7-C906. Reinstatement**

- A. The director may at any time after a final decision on a debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.
- B. Any debarred person may request reinstatement by submitting a petition to the director supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
- C. The director may require a hearing on the request for reinstatement.
- D. The director shall make a written decision on reinstatement within 30 days after the request is filed and specify the factors on which it is based.
- E. Reinstatement decisions by the director are not subject to administrative review.

#### **R2-7-C907. Limited Participation**

The director may allow a debarred person to participate in state contracts on a limited basis during the debarment period upon a written determination that participation is advantageous to the state. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

#### **R2-7-C908. Suspension**

- A. If the director determines that reasonable grounds for debarment exist, the director may suspend a person from receiving any award under R2-7-C910.
- B. For purposes of suspension, a person's conduct may be attributed to an affiliate or another person under R2-7-C905.
- C. The director shall not suspend a person pending debarment unless compelling reasons require suspension to protect state interests.

#### **R2-7-C909. Period and Scope of Suspension**

Unless otherwise agreed to by the parties, the director shall not implement a period of suspension of more than 35 days without satisfying the notice requirements of R2-7-C910.



**R2-7-C910. Notice, Hearing, Determination, and Appeal**

- A. The director shall notify the person suspended by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- B. The notice of suspension shall state:

  - 1. The basis for suspension;
  - 2. The period, including dates, of the suspension;
  - 3. That offers received from the person will not be considered; and
  - 4. That the person is entitled to a hearing on the suspension if the person files a written request for a hearing with the director within 30 days after receipt of the notice.
- C. Within 30 days receipt of the notice of suspension, the suspended party may file a written request for hearing with the director. The appeal shall include the following information:

  - 1. A copy of the decision of the director; and
  - 2. The precise factual or legal error in the decision from which the appeal is taken.
- D. The suspension shall be resolved as an appealable agency action under A.R.S. §§ 41-1092.03 and 41-2613.

**R2-7-C911. Master List**

- A. The director shall maintain a master list of debarments, suspensions, and voluntary exclusions under this Article.
- B. The master list shall show at a minimum, the following information:

  - 1. The names and vendor numbers of those persons whom the state has debarred or suspended under this Article;
  - 2. The statutory authority for the action;
  - 3. The period of debarment or suspension, including the expiration date;
  - 4. The name of the debarring or suspending agency, if the state's debarment or suspension is based on debarment or suspension by another governmental agency; and
  - 5. A separate section listing persons voluntarily excluded from participation in state contracts.

**PART D. HEARING PROCEDURES**

**R2-7-D901. Hearings**

If a hearing is required or permitted under this Chapter, the director shall refer the matter to the Office of Administrative Hearings for findings of fact, conclusions of law, and a recommended decision. The director may also direct the parties to engage in settlement negotiations or alternative dispute resolution procedures before referring the matter for a hearing.

**R2-7-D902. Rehearing of Director's Decision**

- A. Any person, including an agency chief procurement officer, who is aggrieved by the director's decision may file a written request for rehearing of the decision under A.R.S. § 41-1092.09.
- B. The director, within the time for filing a request for rehearing under this rule, may upon the director's own initiative, order a rehearing for any reason for which a rehearing may have been granted on request of a party.

**ARTICLE 10. INTERGOVERNMENTAL PROCUREMENT**

**R2-7-1001. Definition Approval to Enter into a Cooperative Purchasing Agreement**

~~"Eligible procurement unit" means a public procurement unit or a nonprofit educational or public health institution.~~

- A. Agency chief procurement officers may use Arizona state contracts without a cooperative purchasing agreement.
- B. Agency chief procurement officers shall submit a written request to the state procurement administrator before participating in a cooperative purchasing agreement with another public procurement unit or group of public procurement units. The written request for approval shall specify the manner which the administering public procurement unit complies with A.R.S. § 41-2634.
- C. The state procurement administrator shall either:
  - 1. Issue written approval, with any conditions or restrictions;
  - 2. Request additional information from the state government unit; or
  - 3. Deny the request.

**R2-7-1002. Applicability Cooperative Purchasing Agreement Administered by an Agency Chief Procurement Officer**

~~Agreements entered into pursuant to Article 10 of the Arizona Procurement Code shall be limited to the areas of procurement, warehousing or materials management.~~

- A. An agency chief procurement officer shall ensure that any cooperative purchasing agreement administered for use by other eligible procurement units under A.R.S. § 41-2632 provides that:
  - 1. Payment for materials or services and inspection and acceptance of materials or services are the responsibility of the using eligible procurement unit;
  - 2. Failure of an eligible procurement unit to secure performance from the contractor in accordance with the terms and conditions of its purchase order does not necessarily require the state to exercise rights or remedies;

3. The exercise of any rights or remedies by the eligible procurement unit shall be the exclusive obligation of that unit. The state, as the contract administrator and without subjecting itself to any liability, may join in the resolution of any controversy;
  4. The eligible procurement unit shall not use an Arizona state contract as a method for obtaining additional concessions or reduced prices for similar material or services; and
  5. An agency chief procurement officer may terminate without notice any cooperative purchasing agreement if the eligible procurement unit fails to comply with the terms of the contract.
- B. The state procurement administrator may authorize a state governmental unit to establish an Arizona state contract which may be used by designated eligible procurement units.

**R2-7-1003. Intergovernmental Procurement Agreements Approval Establishment of a Committee as Required by A.R.S. §41-2636**

~~All agreements entered into pursuant to Article 10 of the Arizona Procurement Code by the state shall be approved by the State Procurement Administrator.~~

- A. The director shall appoint a committee as required by A.R.S. §41-2636.
- B. The committee shall be comprised of at least seven members, including the committee chair, representing:
  1. Arizona Correctional Industries (“ACI”);
  2. Arizona Industries for the Blind (“AIB”);
  3. Certified Non-Profit Agencies for Disabled Individuals (CNADI) as defined in A.R.S. §41-2636(G);
  4. Other public procurement units.
- C. The state procurement administrator or the state procurement administrator’s designee shall chair the committee.
- D. The committee chair may appoint sub-committees to assist in the evaluation of materials and services under consideration by the committee as a set-aside.
- E. The committee shall meet at least once each fiscal year quarter to report compliance with A.R.S. §41-2636(E).

**R2-7-1004. Cooperative State Purchasing Agreement in Form of a State Requirements Contract Certification as Non-Profit Agency for Disabled Individuals**

~~Any state requirements contract with an eligible procurement unit entered into pursuant to A.R.S. § 41-2642 shall provide that:~~

1. ~~Payment for materials or services and inspection and acceptance of materials or services ordered by the eligible procurement unit under Department contracts shall be the exclusive obligation of such unit;~~

- ~~2. The exercise of any rights or remedies by the eligible procurement unit shall be the exclusive obligation of such unit;~~
  - ~~3. The Department may terminate without notice any cooperative purchasing agreement if the eligible procurement unit fails to comply with the terms of the contract;~~
  - ~~4. Failure of an eligible procurement unit to secure performance from the contractor in accordance with the terms and conditions of its purchase order does not necessarily require the state to exercise its own rights or remedies;~~
  - ~~5. The eligible procurement unit shall not use a state contract as a method for obtaining addition concessions or reduced prices for similar material or services; and~~
  - ~~6. The Department shall provide the eligible procurement unit a list monthly of material and services available from state contracts. An annual fee established by the State Procurement Office and approved by the Director for a copy of such list, plus a fee established by the State Procurement Office for each additional copy, shall be paid by the eligible procurement unit to the Department.~~
- A. A non-profit organization may request written approval from the committee for certified status as a non-profit agency for disabled individuals for the purpose of being eligible for set-aside contracts by submitting information that satisfies the criteria identified in A.R.S. § 41-2636(G).
- B. The committee shall review the information submitted and respond to the requestor in writing by:
1. Approving the request;
  2. Denying the request; or
  3. Requesting more information.

**R2-7-1005. Informational and Technical Services Application for Approval as Required by A.R.S. §41-2636 to Become a Certified Non-Profit Agency for Disabled Individuals**

~~The State Procurement Administrator shall develop, maintain and distribute a list of information and technical services available from the State Procurement Office. Such list shall contain the names of any suspended or debarred contractors and shall be distributed to all eligible procurement units that have entered into a cooperative purchasing agreement with the Department.~~

- A. A non-profit organization requesting certification by the committee as a non-profit agency for disabled individuals shall submit the following written information to the State Procurement Office, attention of the committee chair:
1. Name of organization, address, contact name, and contact information;
  2. Description of the non-profit activity center;
  3. Evidence of the organization's non-profit status;
  4. A statement that the business is operated in accordance with A.R.S. § 41-2636(G);
  5. A statement of Occupational Safety and Health Administration compliance; and
  6. The signature and title of the responsible party within the applicant's organization.

B. The committee shall review the submitted application at the next scheduled committee meeting and may do any of the following:

1. Approve the organization as a certified non-profit agency for disabled individuals;
2. Table the application and request additional information; or
3. Decline the application.

**R2-7-1006. ~~Establishment of the Committee~~ Approval of Specific Materials or Services for Set-aside Use**

A. The Director shall appoint a Committee to determine under A.R.S. § 41-2636 whether materials or services offered by Arizona Industries for the Blind ("AIB") and Arizona Correctional Industries ("ACI") should be placed on an Arizona state contract for mandatory purchase by state governmental units. The state procurement Administrator or his or her designee shall serve as chairman. Committee members shall serve at the pleasure of the Director.

B. The chairman may appoint a subcommittee to assist in the evaluation of materials and services under consideration by the committee.

A. ACI, AIB, and CNADI shall submit the information required by A.R.S. § 41-2636(B) to the committee to request approval of the material or service for mandatory set-aside use. The applicant shall also include the following information:

1. A description of the specific material or service;
2. The pricing offered;
3. Documentation that the pricing offered is fair market pricing; and
4. Information regarding availability.

B. The committee shall evaluate each offered material or service to determine:

1. The existence and extent of a need within state governmental units for the material or service;
2. The ability to produce and deliver the material or service to meet the reasonable requirements of the state governmental units; and
3. Whether the offered price for the material or service is reasonable.

C. The committee may:

1. Approve the requested material or service for use as a mandatory set-aside contract;
2. Establish a sub-committee to study and make a recommendation on the request;
3. Request additional information;
4. Deny the request; or
5. Designate the material or service as available for optional use by a state governmental unit or local public procurement unit under A.R.S. § 41-2636(D).

**R2-7-1007. ~~Evaluation of Materials and Services~~ Contract Awards Directed by the Committee**

~~A. For each material or service under consideration by the Committee, AIB or ACI shall submit to the Committee, where appropriate, specifications, production data, and pricing data relating to each material or service for which an Arizona state contract is sought.~~

~~B. The Committee shall evaluate each material or service to determine the following:~~

- ~~1. The existence and extent of a need within state governmental units for the material or service;~~
- ~~2. The availability of the material or service from AIB or ACI to meet those needs;~~
- ~~3. That AIB or ACI is generally capable of meeting the reasonable delivery requirements of state governmental units;~~
- ~~4. That the quality of the material or service is substantially equivalent to that available from the private sector; and~~
- ~~5. A reasonable price for the material or service or, if AIB or ACI has established a price, that it is equivalent to the price for a substantially similar material or service available from the private sector.~~

A. The State Procurement Office or the agency chief procurement officer designated by the state procurement administrator shall enter into a contract as directed by the committee. Such contracts shall not exceed five years, including any renewal options.

B. Contracts may be renewed as follows:

1. For mandatory state contracts, if the State Procurement Office makes an initial determination that the criteria set forth in R2-7-1006(B) are no longer being met, it shall refer the matter to the committee for a final determination.
2. The committee may:
  - a. Approve the contract renewal;
  - b. Establish a sub-committee to study and make a recommendation on contract renewal;
  - c. Request additional information;
  - d. Deny the contract renewal; or
  - e. Take other action as may be appropriate.

C. The State Procurement Office or agency chief procurement officer designated by the state procurement administrator shall take action as directed by the committee.

**R2-7-1008. ~~Contract Awards by the Committee~~ Contract Awards Initiated by an Agency Chief Procurement Officer or Local Public Procurement Unit**

~~A. If a majority of the Committee votes that the criteria set forth in R2-7-1007(B) have been met, the State Procurement Office shall enter into an Arizona state contract with AIB or ACI for the material or service.~~

~~B. If a majority of the Committee votes that at least the criterion set forth in R2-7-1007(B)(4) has been met, the Committee may direct the State Procurement Office to enter into a contract with AIB or ACI for the material or service from which state governmental units may, but are not required to, purchase.~~

- ~~C. Contracts awarded under this rule shall be for one year with up to three one-year options to renew. If the State Procurement Office, when considering the exercise of an option to renew, makes an initial determination that the criteria set forth in R2-7-1007(B) no longer are being met, the State Procurement Office shall refer the matter to the Committee for a final determination.~~
- ~~D. If a majority of the Committee determines that the criteria set forth in R2-7-1007(B) no longer are being met respecting a material or service covered under a contract awarded under this rule, the Committee shall withdraw its approval of such material or service and notify the State Procurement Office and the AIB or ACI, as appropriate. The State Procurement Office, upon receipt of such notice, shall discontinue procurement of the disapproved material or service until such time as the Committee again may approve the material or service.~~
- A. Competition is not required under A.R.S. § 41-2636(D) to enter into a contract for a material or service that is offered from a set-aside agency, but may be used at the discretion of the agency chief procurement officer or local public procurement unit. If competition is used, an agency chief procurement officer may either:
1. Seek competition only from applicable set-aside agencies; or
  2. Seek competition under A.R.S. §§ 41-2533, 41-2534, or 2535.
- B. Contracts awarded under this Section, shall not exceed five years, including any renewal options.

**R2-7-1009. Procurement of Other AIB or ACI Materials or Services by State Governmental Units**  
**Set-aside Application Dispute Process**

~~A state governmental unit may enter into an agreement pursuant to R2-7-1004 to purchase without competitive bidding a material or service that AIB or ACI has not submitted to the Committee or that has been rejected by the Committee provided delivery and quality of the material or service meet the state governmental unit's reasonable requirements.~~

- A. Any interested party may dispute any committee decision.
- B. An interested party shall submit the dispute of a committee decision to the committee chair in writing and shall include:
1. Name, address, and telephone number of the person submitting the dispute;
  2. Signature of the person or the person's representative;
  3. Identification of the set-aside application disputed;
  4. A detailed statement of the legal and factual grounds for the dispute including copies of relevant documents; and
  5. The form of relief requested.
- C. A dispute of a set-aside application shall be filed with the committee chair through the State Procurement Office within 14 days after the person who submits the dispute knows or should have known the basis of the dispute.

- D. The committee chair shall promptly give written notice of the dispute to the set-aside applicant and the committee.
- E. The committee chair shall resolve the dispute. The committee chair shall issue a written decision within 14 days after the date the dispute has been filed. If the committee chair fails to issue a decision within 14 days, the person who submits the dispute may proceed as if the dispute has been denied.
- F. An appeal of the decision of the committee chair shall be made to the director under R2-7-A905.

**R2-7-1010. Renumbered Repealed**

**ARTICLE 11. RESERVED**

**ARTICLE 12. RESERVED**

**ARTICLE 13. ON-LINE BIDDING**

**R2-7-1301. On-Line Solicitation Process**

- A. The agency chief procurement officer shall submit a written request to procure for a single procurement or group of procurements from the state procurement administer before proceeding with on-line bidding as defined in A.R.S. § 41-2671. The request shall include the following information:
  - 1. An estimate of the number of prospective offerors;
  - 2. A description of the proposed on-line procurement method to be utilized and an explanation of how this method will foster competition;
  - 3. An explanation of why the proposed procurement method is advantageous to the state; and
  - 4. The scope, duration, and estimated total dollar value of the procurement need.
- B. The state procurement administrator shall:
  - 1. Issue written approval, with any conditions or restrictions;
  - 2. Request additional information from the agency chief procurement officer; or
  - 3. Deny the request.
- C. Before modifying the scope, duration, or cost of an approved on-line solicitation process, the agency chief procurement officer shall request approval for the modifications in writing from the state procurement administrator.